07-12-06

BEST AVAILABLE COPY

Express Mail No. EV475142710US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Lawrence L. Kunz

Confirmation No.:

1690

Peter G. Anderson (as corrected)

Serial No.:

09/910,388

Art Unit:

1653

Filed:

July 20, 2001

Examiner:

Hope A. Robinson

For:

THERAPEUTIC INHIBITOR OF

Attorney Docket No.:

10177-211-999

If Whi

VASCULAR SMOOTH MUSCLE CELLS

(formerly 295.003US5)

REQUEST FOR CORRECTION OF INVENTORSHIP UNDER 37 C.F.R. § 1.48(a)

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 1.48(a), the assignee and all inventors of the above-identified patent application hereby petition the United States Patent and Trademark Office ("USPTO") to correct the inventorship of the above-identified patent application by adding **PETER G. ANDERSON** as a co-inventor.

In support thereof and pursuant to 37 C.F.R. § 1.48(a)(2), (3), and (5), the following documents are submitted herewith:

- 1. Statement of Dr. Peter G. Anderson stating that the inventorship error occurred without any deceptive intention on his part (Tab A);
- 2. A Declaration signed by the inventors Dr. Lawrence L. Kunz and Dr. Peter G. Anderson (Tab B); and
- 3. Statement of Assignee Boston Scientific Scimed, Inc., complying with the requirements and 37 C.F.R. § 3.73(b) and agreeing to the correction of inventorship (Tab C).

In further support thereof, Applicant submits herewith a Statement of Facts, which contents are entirely incorporated herein (Tab D).

07/13/2006 RMEBRAHT 00000017 503013 09910388

01 FC:1464

130.00 DA

Please charge the estimated fee of \$130.00 pursuant to 37 CFR §§ 1.17(i), 1.48(a)(4) and any other fees that may be required to Jones Day LLP Deposit Account No. 50-3013. A copy of this sheet is enclosed for accounting purposes.

It is respectfully submitted that all the requirements of 37 C.F.R. §§ 1.48(a) have been met, and it is requested that the present Request adding DR. PETER G. ANDERSON as a co-inventor of the above-identified patent application be granted.

If any issues remain, the Examiner is invited to telephone the undersigned to discuss the same and to arrange for prompt and efficient handling of this matter.

Respectfully submitted,

Date July 10, 2006

Gidon D. Stern (Reg. No. 27,469)

By: Catharina J. Chin Eng (Reg. No. 42,412)

JONES DAY LLP 222 East 41st Street New York, NY 10017 (212) 326-3939

-2-



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Hope A. Robinson

For:

THERAPEUTIC INHIBITOR OF

Attorney Docket No.:

10177-211-999

VASCULAR SMOOTH MUSCLE CELLS

(formerly 295.003US5

STATEMENT BY INVENTOR TO BE ADDED PURSUANT TO 37 C.F.R. § 1.48(a)

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 1.48(a)(2), I, Dr. Peter G. Anderson state the

following:

I have reviewed and understand the content of the Request for Correction of Inventorship Under 37 C.F.R. § 1.48(a) submitted concurrently herewith to amend the above-identified application to name the correct inventors.

I hereby state that the amendment of the inventorship to add my name is due to an error that occurred without deceptive intention on my part in the omission of my name as an inventor.

Date: 6-12-06

Dr. Peter G. Anderson



Therapeutic Inhibitor of Vascular Smooth Muscle Cells

is attached hereto and includes amendment(s) filed on (if applicable)

and for which a patent application:

 \boxtimes

DECLARATION

My residence, post office address and citizenship are as stated below at 201 et seq. beneath my name.

I believe I am the original, first and sole inventor if only one name is listed at 201 below, or an original, first and joint inventor if plural names are listed at 201 et seq. below, of the subject matter which is claimed and for which a patent is sought on the invention entitled

was filed in the United States on July 20, 2001 as Application No. 09/910,388 (for declaration not accompanying application)

with amendment(s) filed of was filed as PCT internation		on	and was am	ended under PCT Artic	cle 19 on (ifapplicat	ole)
I hereby authorize and request m	y attorneys at Jones Day to	insert herei	n parenthese	s (Application No	filed) the
filing date and application number I hereby state that I have reviewed amendment referred to above.	• •		oove identific	ed application, includi	ng the claims, as a	mended by any
I acknowledge the duty to disclor Regulations, § 1.56.	se information known to m	ne to be mate	rial to patent	ability as defined in T	itle 37, Code of Fe	ederal
I hereby claim foreign priority be certificate listed below and have that of the application on which p	also identified below any t					
EARLIEST FOREIGN	APPLICATION(S), IF A	NY, FILED	PRIOR TO	THE FILING DATE (OF THE APPLICA	TION
APPLICATION NUMBER	COUNTRY			E OF FILING, month, year)	PRIORITY	CLAIMED
					YES 🗆	№ □
					YES 🗆	NO 🗆
I hereby claim the benefit under	Title 35, United States Coo	ie, §119(e) o	of any United	States provisional app	olication(s) listed l	pelow.
PROVISIONAL AP	PLICATION NUMBER			FILING	G DATE	
				-		
I hereby claim the benefit under subject matter of each of the clai first paragraph of Title 35, Unite patentability as defined in Title 3 application and the national or Po	ms of this application is no d States Code §112, I ackn 7, Code of Federal Regula	ot disclosed in the content of the c	n the prior U duty to discl which becan	nited States application ose information know	n in the manner pa n to me which is r	rovided by the naterial to
NON-PROVISIONAL	FILING DATE			STATUS		
APPLICATION SERIAL NO.		PATE	NTED	PENDING	ABANDON	IED/INACTIVE
09/470,662	12/22/99	0	₫			
09/113,733	7/10/98		₫			
08/450,793	5/25/95	0	₫			
08/062,451	5/13/93	:				⊠
08/011,669	1/28/93					<u> </u>
PCT/US92/08220	9/25/92					⊠

(1) NYJD-1622834v1

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

		SIGNATURE OF INVENTOR 205		DATE	
	POST OFFICE ADDRESS	STREET	СПУ	STATE OR COUNTRY DATE	ZIP CODE
2 0 5	RESIDENCE & CITIZENSHIP	СПУ	STATE OR FOREIGN COUNTRY	COUNTRY OF CITIZENS	БНІР
	FULL NAME OF INVENTOR	LAST NAME	FIRST NAME	MIDDLE NAME	
		SIGNATURE OF INVENTOR 204		DATE	
	POST OFFICE ADDRESS	STREET	CITY	STATE OR COUNTRY	ZIP CODE
2 0 4	RESIDENCE & CITIZENSHIP	спү	STATE OR FOREIGN COUNTRY	COUNTRY OF CITIZENS	
	FULL NAME OF INVENTOR	LAST NAME	FIRST NAME	MIDDLE NAME	
		SIGNATURE OF INVENTOR 203		DATE	
	POST OFFICE ADDRESS	STREET	СІТУ	STATE OR COUNTRY	ZIP CODE
2 0 3	RESIDENCE & CITIZENSHIP	спту	STATE OR FOREIGN COUNTRY	COUNTRY OF CITIZENS	
	FULL NAME OF INVENTOR	LAST NAME	FIRST NAME	MIDDLE NAME	
		SIGNATURE OF INVENTOR 202		DATE	
	POST OFFICE ADDRESS	406 Delcris Drive	Birmingham	AL	35226
2 0 2	RESIDENCE & CITIZENSHIP	Birmingham	AL CITY	U.S.A. STATE OR COUNTRY	ZIP CODE
2	FULL NAME OF INVENTOR	Anderson	Peter STATE OR FOREIGN COUNTRY	G.	SHIP
	т	LAST NAME	FIRST NAME	May 22,	2006
	ADDRESS	2310 223 rd Court NE	Sammamish	WA 98074	
l	POST OFFICE	STREET	СПУ	STATE OR COUNTRY	ZIP CODE
2	RESIDENCE & CITIZENSHIP	спу Sammamish	STATE OR FOREIGN COUNTRY WA	COUNTRY OF CITIZENS U.S.A.	БНІР
	FULL NAME OF INVENTOR	LAST NAME Kunz	Lawrence	MIDDLE NAME L.	

NYJD-1622834v1 (2)



Therapeutic Inhibitor of Vascular Smooth Muscle Cells

is attached hereto and includes amendment(s) filed on (if applicable)

and for which a patent application:

П

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DECLARATION

My residence, post office address and citizenship are as stated below at 201 et seq. beneath my name.

I believe I am the original, first and sole inventor if only one name is listed at 201 below, or an original, first and joint inventor if plural names are listed at 201 et seq. below, of the subject matter which is claimed and for which a patent is sought on the invention entitled

was filed in the United States on July 20, 2001 as Application No. 09/910,388 (for declaration not accompanying application)

with amendment(s) filed on (if applicable) was filed as PCT international Application No. on and was amended under PCT Article 19 on (if applicable) I hereby authorize and request my attorneys at Jones Day to insert herein parentheses (Application No. ___ _) the filed filing date and application number of said application when known. I hereby state that I have reviewed and understand the contents of the above identified application, including the claims, as amended by any amendment referred to above. l acknowledge the duty to disclose information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56. 1 hereby claim foreign priority benefits under Title 35, United States Code, §119(a)-(d) of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed: EARLIEST FOREIGN APPLICATION(S), IF ANY, FILED PRIOR TO THE FILING DATE OF THE APPLICATION DATE OF FILING APPLICATION NUMBER COUNTRY PRIORITY CLAIMED (day, month, year) YES NO 🔲 YES 🔲 NO 🗆 I hereby claim the benefit under Title 35, United States Code, §119(e) of any United States provisional application(s) listed below. PROVISIONAL APPLICATION NUMBER FILING DATE I hereby claim the benefit under Title 35, United States Code, §120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code §112, I acknowledge the duty to disclose information known to me which is material to patentability as defined in Title 37, Code of Federal Regulations, §1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application: NON-PROVISIONAL STATUS FILING DATE APPLICATION SERIAL NO. **PATENTED** PENDING ABANDONED/INACTIVE 09/470,662 12/22/99 网 09/113,733 7/10/98 \boxtimes 08/450,793 \boxtimes 5/25/95 \boxtimes 08/062,451 5/13/93 08/011,669 1/28/93 \boxtimes 9/25/92 X PCT/US92/08220

NYJD-1622834v1 (1)

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

	FULL NAME OF	LAST NAME	FIRST NAME	MIDDLE NAME	
	INVENTOR	Kunz	Lawrence	L.	
2 0	RESIDENCE & CITIZENSHIP	CITY Sammamish	STATE OR FOREIGN COUNTRY WA	COUNTRY OF CITIZENS U.S.A.	SHIP
1		STREET	CITY	STATE OR COUNTRY	ZIP CODE
	POST OFFICE ADDRESS	2310 223 rd Court NE	Sammamish	WA 98074	
		SIGNATURE OF INVENTOR 201		DATE	
	FULL NAME OF	LAST NAME	FIRST NAME	MIDDLE NAME	·
	INVENTOR	Anderson	Peter	G.	
2 0 2	RESIDENCE &	CITY	STATE OR FOREIGN COUNTRY	COUNTRY OF CITIZENS	БНІР
	CITIZENSHIP	Birmingham	AL	U.S.A.	
	POST OFFICE ADDRESS	406 Delcris Drive	CITY Birmingham	STATE OR COUNTRY AL	35226
		SIGNATURE OF JEVENTOR 207		DATE 6-12.	-06
	FULL NAME OF INVENTOR	LAST NAME	FIRST NAME	MIDDLE NAME	-
2 0 3	RESIDENCE & CITIZENSHIP	СПУ	STATE OR FOREIGN COUNTRY	COUNTRY OF CITIZENS	SHIP
3	POST OFFICE ADDRESS	STREET	спу	STATE OR COUNTRY	ZIP CODE
		SIGNATURE OF INVENTOR 203		DATE	
	FULL NAME OF INVENTOR	LAST NAME	FIRST NAME	MIDDLE NAME	
2 0 4	RESIDENCE & CITIZENSHIP	CITY	STATE OR FOREIGN COUNTRY	COUNTRY OF CITIZENSHIP	
7	POST OFFICE ADDRESS	STREET	СІТУ	STATE OR COUNTRY	ZIP CODE
		SIGNATURE OF INVENTOR 204		DATE	
	FULL NAME OF INVENTOR	LAST NAME	FIRST NAME	MIDDLE NAME	
2 0 5	RESIDENCE & CITIZENSHIP	CITY	STATE OR FOREIGN COUNTRY	COUNTRY OF CITIZENS	SHIP
<i>,</i>	POST OFFICE ADDRESS	STREET .	СІТУ	STATE OR COUNTRY	ZIP CODE
		SIGNATURE OF INVENTOR 205		DATE	



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Examiner:

Hope A. Robinson

For:

THERAPEUTIC INHIBITOR OF

VASCULAR SMOOTH MUSCLE CELLS

Attorney Docket No.:

10177-211-999

(formerly 295.003US5)

CONSENT BY ASSIGNEE FOR CORRECTION OF INVENTORSHIP PURSUANT TO 37 C.F.R. § 1.48(a)

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

Boston Scientific Scimed, Inc., a Minnesota corporation having a principal place of business at One Scimed Place, Maple Grove, MN 55311-1566, Assignee, of the entire right, title, and interest in, to and under the invention and U.S. patent application Serial No. 09/910,388, filed July 20, 2001, entitled "Therapeutic Inhibitor of Vascular Smooth Muscle Cells," hereby consents to amendment of the application to name the following actual inventors: Dr. Lawrence L. Kunz and Dr. Peter G. Anderson.

The above-identified application is a continuation of U.S. patent application Serial No. 09/470,662, issued as U.S. Patent No. 6,268,390, which is a continuation of U.S. patent application Serial No. 09/113,733, issued as U.S. Patent No. 6,074,659, which is a continuation of U.S. patent application Serial No. 08/450,793 ("the '793 application"), issued as U.S. Patent No. 5,811,447, which is a continuation of U.S. patent application Serial No. 08/062,451 ("the '451 application"), now abandoned, which is a continuation-in-part of U.S. patent application Serial No. 08/011,669, now abandoned, which is a continuation-inpart of International Application No. PCT/US92/08220, published as WO 94/07529.

Inventor Dr. Lawrence L. Kunz assigned his rights in the '451 application to NeoRx Corporation by virtue of an Assignment recorded on March 9, 1995 at Reel 1375, Frame 924-927. Subsequently, NeoRx Corporation assigned the '793 application, which claims priority

to the '451 application, to Scimed Life Systems, Inc. (which changed its name to Boston Scientific Scimed, Inc.) by virtue of an Assignment recorded on April 23, 2003 at Reel 013974, Frame 0188-0192.

Inventor Dr. Peter G. Anderson has assigned his rights in the above-identified application (S/N 09/910,388) to The UAB Research Foundation ("UABRF"). Subsequently, UABRF assigned the above-identified application (S/N 09/910,388) to Boston Scientific Scimed, Inc. (previously Scimed Life Systems, Inc.) by virtue of the Patent Assignment Agreement dated February 11, 2005. A Confirmatory Assignment of the rights transferred to Boston Scientific Scimed, Inc. pursuant to this February 11, 2005 agreement is submitted for recordation herewith.

The undersigned is empowered to act on behalf of the Assignee.

I hereby declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements, and the like so made, are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: MIN H, 2004

Typed Name:

Scott T. Bluni

Position/Title:

Assistant Secretary

Boston Scientific Scimed, Inc.

One Scimed Place

Maple Grove, MN 55311-1566

ASSIGNMENT

WHEREAS, I, Peter G. Anderson, ASSIGNOR, citizen of the United States, residing at 406 Delcris Drive, Birmingham, AL 35226, am the inventor of the inventions in the United States patents and patent applications set forth in Appendix A annexed hereto

and WHEREAS, The UAB Research Foundation, ASSIGNEE, is desirous of obtaining my entire right, title and interest in, to and under the said inventions and the said United States patents and applications:

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00) to me in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, I, the said ASSIGNOR, have sold, assigned, transferred and set over, and by these presents do hereby sell, assign, transfer and set over, unto the said ASSIGNEE, its successors, legal representatives and assigns, my entire right, title and interest in, to and under the said inventions, and the said United States patents and applications and all divisions, renewals and continuations thereof, and all Patents of the United States which may be granted thereon and all reissues and extensions thereof; and all applications for industrial property protection, including, without limitation, all applications for patents, utility models, and designs which have been or may hereafter be filed for said inventions in any country or countries foreign to the United States, together with the right to file such applications and the right to claim for the same the priority rights derived from said United States application under the Patent Laws of the United States, the International Convention for the Protection of Industrial Property, or any other international agreement or the domestic laws of the country in which any such application is filed, as may be applicable; and all forms of industrial property protection, including, without limitation, patents, utility models, inventors' certificates and designs which may be granted for said invention in any country or countries foreign to the United States and all extensions, renewals and reissues thereof:

AND I HEREBY authorize and request the Commissioner for Patents and any Official of any country or countries foreign to the United States, whose duty it is to issue patents or other evidence or forms of industrial property protection on applications as aforesaid, to issue the same to the said ASSIGNEE, its successors, legal representatives and assigns, in accordance with the terms of this instrument.

AND I HEREBY covenant and agree that I have full right to convey the entire interest herein assigned, and that I have not executed, and will not execute, any agreement in conflict herewith.

AND I HEREBY further covenant and agree that I will communicate to the said ASSIGNEE, its successors, legal representatives and assigns, any facts known to me respecting said invention, and testify in any legal proceeding, sign all lawful papers, execute all divisional, continuing, reissue and foreign applications, make all rightful oaths, and generally do everything possible to aid the said ASSIGNEE, its successors, legal representatives and assigns, to obtain and enforce proper protection for said invention in all countries.

WITNESS my hand and official seal

NOTARY PUBLIC STATE OF ALABAMA AT LARGE MY COMMISSION EXPIRES: Mar 3, 2009 BONDED THRU NOTARY PUBLIC UNDERWRITERS

APPENDIX A (Page 1 of 3)

Serial #	Title	Filing Date	Patent #	Issue Date
08/389,712	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	2/15/1995	6,515,009	2/4/2003
09/590,002	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	6/3/2000		
09/910,387	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	7/20/2001	6,599,928	7/29/2003
08/546,794	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	10/23/1995	6,171,609	1/9/2001
10/190,211	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	7/3/2002		
10/860,486	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	6/2/2004		
08/450,793	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	5/25/1995	5,811,447	9/22/1998
08/738,733	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	10/28/1996	5,733,925	3/31/1998
09/113,733	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	7/10/1998	6,074,659	6/13/2000
09/470,662	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	12/22/1999	6,268,390	7/31/2001
09/910,388	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	7/20/2001		
08/829,991	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	3/31/1997	6,306,421	10/23/2001
09/896,208	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	6/29/2001	6,491,938	12/10/2002
09/995,490	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	11/27/2001	6,569,441	5/27/2003
08/829,685	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	3/31/1997	5,981,568	11/9/1999
09/361,194	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	7/26/1999	6,358,989	3/19/2002
10/024,885	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	12/18/2001	6,663,881	12/16/2003
10/330,834	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	12/27/2002	6,720,350	4/13/2004

APPENDIX A (Page 2 of 3)

08/242,161	Prevention and Treatment of Pathologies Associated With Abnormally Proliferative Smooth Muscle Cells	5/12/1994	5,847,007	12/8/1998
08/300,357	Prevention and Treatment of Pathologies Associated With Abnormally Proliferative Smooth Muscle Cells	9/2/1994	5,472,985	12/5/1995
08/450,520	Methods to Determine TGF-Beta	5/25/1995	5,545,569	8/13/1996
08/476,735	Method for Identifying an Agent Which Increases TGF-Beta Levels	6/7/1995	5,595,722	1/21/1997
08/477,393	Method to Determine TGF-Beta	6/7/1995	6,395,494	5/28/2002
08/486,334	Prevention and Treatment of Cardiovascular Pathologies	6/7/1995	5,770,609	6/23/1998
08/528,810	Prevention and Treatment of Pathologies Associated With Abnormally Proliferative Smooth Muscle Cells	9/15/1995	5,599,844	2/4/1997
08/560,808	Prevention and Treatment of Pathologies Associated With Abnormally Proliferative Smooth Muscle Cells	11/21/1995	5,773,479	6/30/1998
08/965,589	Prevention and Treatment of Pathologies Associated With Abnormally Proliferative Smooth Muscle Cells	11/6/1997	6,166,090	12/26/2000
08/965,254	Prevention and Treatment of Pathologies Associated With Abnormally Proliferative Smooth Muscle Cells	11/6/1997	5,945,456	8/31/1999
08/973,570	Prevention and Treatment of Cardiovascular Pathologies	12/5/1997	6,197,789	3/6/2001
09/082,643	Prevention and Treatment of Cardiovascular Pathologies	5/21/1998	6,251,920	6/26/2001
09/306,606	Prevention and Treatment of Cardiovascular Pathologies	5/6/1999	6,262,079	7/17/2001
09/754,775	Prevention and Treatment of Cardiovascular Pathologies	1/4/2001		
10/106,761	Method to Determine TGF-Beta	3/26/2002		

APPENDIX A (Page 3 of 3)

09/057,323	Compounds and Therapies for the Prevention of Vascular and Nonvascular Pathologies	4/9/1998	6,117,911	9/12/2000
09/567,558	Compounds and Therapies for the Prevention of Vascular and Nonvascular Pathologies	5/5/2000	6,410,587	6/25/2002
10/170,971	Compounds and Therapies for the Prevention of Vascular and Nonvascular Pathologies	6/13/2002	6,734,208	5/11/2004

CONFIRMATORY ASSIGNMENT OF PATENT RIGHTS

The UAB Research Foundation of Birmingham, Alabama ("Assignor"), having a principal place of business at 1530 3rd Avenue South, AB 1120 G, Birmingham, Alabama, confirms that pursuant to the Patent Assignment Agreement between Assignor and Boston Scientific Scimed, Inc. ("Assignee") dated February 11, 2005, Assignor hereby sells, assigns, transfers, and sets over, unto Assignee, a corporation of Minnesota, having a principal place of business at One Scimed Place, Maple Grove, MN, 55311-1566 the entire right, title, and interest in, to and under the United States patents and patent applications identified below, and the invention(s) set forth therein, including any and all rights that Assignor has received from Dr. Peter G. Anderson for said inventions, such as those received pursuant to the Assignment from Dr. Peter G. Anderson to Assignor submitted herewith, and any and all claims, demands, causes of action, damages and remedies of every kind recoverable at law or in equity or otherwise from any and every party for any and every infringement of such patents and patent applications together with the rights to bring and maintain any action for past infringements and for recovery of damages and fees:

Serial #	Title	Filing Date	Patent #	Issue Date
08/389,712	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	2/15/1995	6,515,009	2/4/2003
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Serial #	Title	Filing Date	Patent #	Issue Date
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09/361,194	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	7/26/1999	6,358,989	3/19/2002
10/024,885	Therapeutic Inhibitor of Vascular Smooth Muscle Cells	12/18/2001	6,663,881	12/16/2003
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08/450,520	Methods to Determine TGF-Beta	5/25/1995	5,545,569	8/13/1996

Serial #	Title	Filing Date	Patent #	Issue Date
08/476,735	Method for Identifying an Agent Which Increases TGF-Beta Levels	6/7/1995	5,595,722	1/21/1997
08/477,393	Method to Determine TGF-Beta	6/7/1995	6,395,494	5/28/2002
08/486,334	Prevention and Treatment of Cardiovascular Pathologies	6/7/1995	5,770,609	6/23/1998
08/528,810	Prevention and Treatment of Pathologies Associated With Abnormally Proliferative Smooth Muscle Cells	9/15/1995	5,599,844	2/4/1997
08/560,808	Prevention and Treatment of Pathologies Associated With Abnormally Proliferative Smooth Muscle Cells	11/21/1995	5,773,479	6/30/1998
08/965,589	Prevention and Treatment of Pathologies Associated With Abnormally Proliferative Smooth Muscle Cells	11/6/1997	6,166,090	12/26/2000
08/965,254	Prevention and Treatment of Pathologies Associated With Abnormally Proliferative Smooth Muscle Cells	11/6/1997	5,945,456	8/31/1999
08/973,570	Prevention and Treatment of Cardiovascular Pathologies	12/5/1997	6,197,789	3/6/2001
09/082,643	Prevention and Treatment of Cardiovascular Pathologies	5/21/1998	6,251,920	6/26/2001
09/306,606	Prevention and Treatment of Cardiovascular Pathologies	5/6/1999	6,262,079	7/17/2001
09/754,775	Prevention and Treatment of Cardiovascular Pathologies	1/4/2001		
10/106,761	Method to Determine TGF-Beta	3/26/2002		

Serial #	Title	Filing Date	Patent #	Issue Date
09/057,323	Compounds and Therapies for the Prevention of Vascular and Nonvascular Pathologies	4/9/1998	6,117,911	9/12/2000
09/567,558	Compounds and Therapies for the Prevention of Vascular and Nonvascular Pathologies	5/5/2000	6,410,587	6/25/2002
10/170,971	Compounds and Therapies for the Prevention of Vascular and Nonvascular Pathologies	6/13/2002	6,734,208	5/11/2004

Date:_	IN TESTIMONY	スクッと WHEREOF, I hereunto	-	Chief E	S. White xecutive Office AB Research Fo	oundatio
			 Jen			(L. <u>S</u> .)
State of County of	•)) ss.:				

On Jone 12, 2006, before me, Jone 12. Notary Public, personally appeared William 3. White, personally known to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official

NOTARY PUBLIC STATE OF ALABAMA AT LARGE MY COMMISSION EXPIRES: Mar 3, 2009 BONDED THRU NOTARY PUBLIC UNDERWRITERS

OLPE 403

Express Mail No. EV475142710US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Lawrence L. Kunz Confirmation No.:

1690

Peter G. Anderson (as corrected)

Serial No.:

09/910,388

Art Unit:

1653

Filed:

July 20, 2001

Examiner:

Hope A. Robinson

For: T

THERAPEUTIC INHIBITOR OF

Attorney Docket No.:

10177-211-999

VASCULAR SMOOTH MUSCLE CELLS

(formerly 295.003US5)

STATEMENT OF FACTS IN SUPPORT OF REQUEST FOR CORRECTION OF INVENTORSHIP UNDER 37 C.F.R. § 1.48(a)

Commission for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. § 1.48(a), Applicant hereby requests the United States Patent & Trademark Office ("USPTO") to correct the inventorship of the above-identified patent application by adding Dr. Peter G. Anderson as a co-inventor. In further support of its request to correct inventorship, Applicant hereby respectfully submits this statement of facts.

- During a litigation involving certain U.S. patents related to the above-identified application, specifically U.S. Patent Nos. 6,171,609, 6,515,009 and 6,599,928, certain facts came to light which indicate that Dr. Peter G. Anderson should be a named inventor on the above-identified application as well as on currently pending U.S. patent application Serial Nos. 10/860,486 and 09/590,002. The litigation, filed in the United States District Court for the District of Delaware, is captioned *Boston Scientific Scimed, Inc. et al. v. Cordis Corporation et al.*, Civil Action No. 03-283-SLR (D. Del.) (hereinafter "the Cordis litigation").
- 2. The present application and these two other applications are related to U.S. patent application Serial No. 08/011,669 filed on January 28, 1993, now abandoned. *See* Exh. 1.

- Specifically, currently pending U.S. application Serial No. 10/860,486 is a continuation of U.S. patent application Serial No. 10/190,211, now abandoned, which is a continuation of U.S. patent application Serial No. 08/894,350, now abandoned, which is a National Stage application of International Application No. PCT/US96/02125, published as WO 96/25176, which claims the priority benefit to U.S. patent application Serial No. 08/389,712, issued as U.S. Patent No. 6,515,009, which is a continuation-in-part of U.S. patent application Serial No. 08/011,669.
- Currently pending U.S. application Serial No. 09/590,002 is a continuation of U.S. patent application Serial No. 08/389,712, issued as U.S. Patent No. 6,515,009, which is a continuation-in-part of U.S. patent application Serial No. 08/011,669.
- Currently pending U.S. application Serial No. 09/910,388 is a continuation of U.S. patent application Serial No. 09/470,662, issued as U.S. Patent No. 6,268,390, which is a continuation of U.S. patent application Serial No. 09/113,733, issued as U.S. Patent No. 6,074,659, which is a continuation of U.S. patent application Serial No. 08/450,793, issued as U.S. Patent No. 5,811,447, which is a continuation of U.S. patent application Serial No. 08/062,451, now abandoned, which is a continuation-in-part of U.S. patent application Serial No. 08/062,451 now abandoned, which is a continuation-in-part of U.S. patent application Serial No. 08/011,669.

Relationship Between NeoRx and UAB in 1990-1993

- Anderson, a professor employed by the University of Alabama at Birmingham ("UAB") with an obligation to assign his intellectual property to The UAB Research Foundation ("UABRF"), and Dr. Lawrence L. Kunz, a principal scientist employed by NeoRx Corporation ("NeoRx") with an obligation to assign his intellectual property to NeoRx, met at the American College of Veterinary Pathologists annual meeting in Phoenix, Arizona where they discussed *inter alia*, the prevention or treatment of restenosis. Exh. 2; Exh. 3 at 61-62. Thereafter, Dr. Anderson and Dr. Kunz began collaborating on the development of treatments for and prevention of restenosis.
- 4. On June 1, 1991 NeoRx and UABRF entered into an agreement relating to research work concerning restenosis. The agreement also delineated NeoRx's and UABRF's respective rights in the technology being developed as follows: inventions made

NYJD-1622834v1 -2-

solely by NeoRx would be owned by NeoRx, inventions made solely by UABRF would be owned by UABRF and inventions jointly made by NeoRx and UABRF would be co-owned by NeoRx and UABRF. Exh. 4 at 6-7.

- 5. On September 27, 1991, U.S. patent application Serial No. 07/767,254 ("the '254 application") was filed naming as inventors Dr. Kunz and Dr. Anderson.
- 6. On September 25, 1992, PCT/US92/08220 was filed naming Dr. Kunz as the inventor. PCT/US92/08220 originally claimed priority to the '254 application but that claim to priority was subsequently withdrawn in the PCT application. Exh. 5 at BSX 404589; Exh. 6 at 160.
- 7. On January 28, 1993, U.S. patent application Serial No. 08/011,669 ("the '669 application"), was filed naming as inventors Dr. Kunz and Mr. Richard Klein, a laboratory technologist at NeoRx. Exh. 7; Exh. 8 at 278.
- UABRF contacted NeoRx and informed NeoRx that Dr. Anderson should be named an inventor of PCT application PCT/US92/08220 and of the '669 application. Exh. 9; Exh. 3 at 109-119, 121-122; Exh. 10 at 132-134; Exh. 8 at 284; Exh. 6 at 57. On June 14, 1993, NeoRx agreed to add Dr. Anderson as an inventor to the then-pending patent applications. Exh. 11; Exh. 10 at 136-140; Exh. 6 at 58-59. Furthermore, UABRF and NeoRx entered into a modified agreement which reiterated the ownership of NeoRx's and UABRF's respective rights in the technology being developed as stated in their previous agreement of June 1, 1991 as follows: inventions made solely by NeoRx would be owned by NeoRx, inventions made solely by UABRF would be owned by UABRF and inventions jointly made by NeoRx and UABRF would be co-owned by NeoRx and UABRF. Exh. 12; Exh. 3 at 129.

Changes of Inventorship on U.S. Patent No. 5,811,447

9. On May 13, 1993, U.S. patent application Serial No. 08/062,451 ("the '451 application") was filed naming seven inventors, including among others Dr. Kunz, Dr. John Reno, Mr. Klein and Dr. Anderson. On information and belief, in November 1994 an assignment was prepared from Dr. Anderson to NeoRx for the '451 application. Exh. 13; Exh. 3 at 132-138; Exh. 14 at 48-49; Exh. 6 at 114-120. Dr. Anderson signed and returned to NeoRx the assignment, which contained a reference to the earlier filed '254 application. Exh. 13; Exh. 3 at 132-138; Exh. 14 at 48-49; Exh. 6 at 114-120. NeoRx subsequently filed with the USPTO an assignment of the '451 application which did not contain a reference to

NYJD-1622834v1 -3-

the '254 application. Exh. 15; Exh. 3 at 140-143; Exh. 14 at 51-55; Exh. 6 at 114-120. Dr. Anderson testified that he did not remember reviewing and signing the assignment of the '451 application as filed with the USPTO. Exh. 15; Exh. 3 at 140-143; Exh. 14 at 51-55; Exh. 6 at 114-120.

- On May 25, 1995, U.S. patent application Serial No. 08/450,793 10. ("the '793 application") was filed, which was a file wrapper continuation of the '451 application, and later issued as U.S. Patent No. 5,811,447 ("the '447 patent"). As filed, the '793 application named the same seven inventors as the '451 application, including among others Dr. Kunz, Dr. Reno, Mr. Klein and Dr. Anderson. On May 21, 1996, NeoRx filed a petition to correct the inventorship of the '793 application under 37 C.F.R. § 1.48(b) to limit the inventors to Dr. Kunz and Dr. Reno. Exh. 16; Exh. 6 at 108-113. However, that petition was never acted on by the USPTO. On June 17, 1996, NeoRx filed another petition to correct inventorship to limit the inventor to Dr. Kunz. Exh. 17. That petition was also never acted on by the USPTO. On January 27, 2000, after the '793 application issued as the '447 patent, NeoRx filed a request for a certificate of correction to delete all of the named inventors except Dr. Kunz, but that request was rejected by the USPTO. Exh. 18. On October 11, 2000, NeoRx filed a renewed request for a certificate of correction to delete all of the named inventors except Dr. Kunz. The USPTO did not grant the portion of the request for a certificate of correction relating to inventorship. Exh. 19.
- 11. On information and belief, on January 30, 2003, Dr. Janet Embretson, outside patent counsel for NeoRx, requested Dr. Anderson's consent to be removed from the '447 patent. Dr. Anderson disagreed with Dr. Embretson's assessment and indicated that he had contributed to certain claims of the '447 patent. Exh. 20; Exh. 3 at 163-170, 175-183; Exh. 6 at 209-221; Exh. 21 at 35, 106-108.

Changes of Inventorship on U.S. Patent Application Serial No. 08/389,712

12. On February 15, 1995, U.S. patent application Serial No. 08/389,712 ("the '712 application"), was filed naming Dr. Kunz and Mr. Klein as inventors. The '712 application issued as U.S. Patent No. 6,515,009. On information and belief, on September 25, 1996, Ms. Anna Lewak Wight, NeoRx's intellectual property counsel, indicated to Dr. Anderson that he would be added as an inventor to U.S. patent application Serial No. 08/406,921 ("the '921 application"), which is related to the '712 application. Exh. 22; Exh. 6 at 62-64. On December 3, 1996 NeoRx sent Dr. Anderson a letter indicating he would be added as an inventor to the '712 application. Exh. 23; Exh. 3 at 144, 155-163; Exh. 6 at 66-

77. In June 1997, NeoRx filed a petition to correct the inventorship of the '712 application to change inventorship from Dr. Kunz and Mr. Klein to Dr. Kunz and Dr. Reno, and as to which Ms. Wight indicated that NeoRx had previously performed an inventorship analysis in early 1996 to support this change. Exh. 6 at 122-127; Exh. 24. Also, this petition was not acted on by the USPTO. The petition did not seek to add Dr. Anderson as an inventor on the '712 application. Exh. 6 at 132-146.

The Cordis Litigation

- In April 2003, Boston Scientific Scimed, Inc. (formerly Scimed Life Systems, Inc.) purchased from NeoRx issued patents and pending patent applications relating to the treatment of restenosis, including the three issued patents involved in the Cordis litigation, (*i.e.*, U.S. Patent Nos. 6,171,609, 6,515,009 and 6,599,928), as well as pending U.S. application Serial Nos. 10/860,486 ("the '486 application"), 09/590,002 ("the '002 application") and 09/910,388 ("the '388 application"). Exh. 3 at 173.
- 14. In the course of the Cordis litigation, Dr. Anderson testified that he contributed to the claims of U.S. Patent No. 6,515,009, which issued from the '712 application, a common ancestor application of the '002 and '486 applications. Exh. 3 at 161.
- 15. In the course of that litigation, Dr. Anderson testified that he contributed to the claims of U.S. Patent No. 6,171,609, which claims priority to U.S. Patent No. 6,515,009, which issued from the '712 application, and is related to the '002 and '486 applications. Exh. 3 at 194.
- 16. In the course of the Cordis litigation, Dr. Anderson testified that he contributed to the claims of U.S. Patent No. 6,599,928, which claims priority to U.S. Patent No. 6,515,009, which issued from the '712 application, and is related to the '002 and '486 applications. Exh. 3 at 196.
- 17. In the course of that litigation, Dr. Anderson testified that he contributed to the claims of U.S. Patent No. 5,811,447, which issued from U.S. Patent application Serial No. 08/450,793, to which the '388 application claims priority. Also, the '447 patent and the '002 and '486 applications are related to U.S. Patent Application Serial No. 08/011,669. Exh. 3 at 167-170.
- 18. On February 11, 2005, UABRF assigned to Boston Scientific Scimed, Inc. (previously Scimed Life Systems, Inc.) all rights in the above-identified application for which Dr. Anderson was obligated to assign to UABRF.

NYJD-1622834v1 -5-

- 19. Dr. Anderson has simultaneously submitted with the petition to correct inventorship pursuant to 37 C.F.R. § 1.48(a) a statement that the error of his not being named an inventor of U.S. application Serial No. 09/910,388 arose without any deceptive intention on his part. As shown by Dr. Anderson's statement and the new declaration submitted herewith, Dr. Anderson believes that he is a co-inventor of the pending claims in U.S. application Serial No. 09/910,388.
- 20. The other named inventor of U.S. application Serial No. 09/910,388, Dr. Kunz, has submitted a new declaration.

If any issues remain, the Examiner is invited to telephone the undersigned to discuss the same and to arrange for prompt and efficient handling of this matter.

Respectfully submitted,

Date July 10, 2006

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(Reg. No. 27,469)

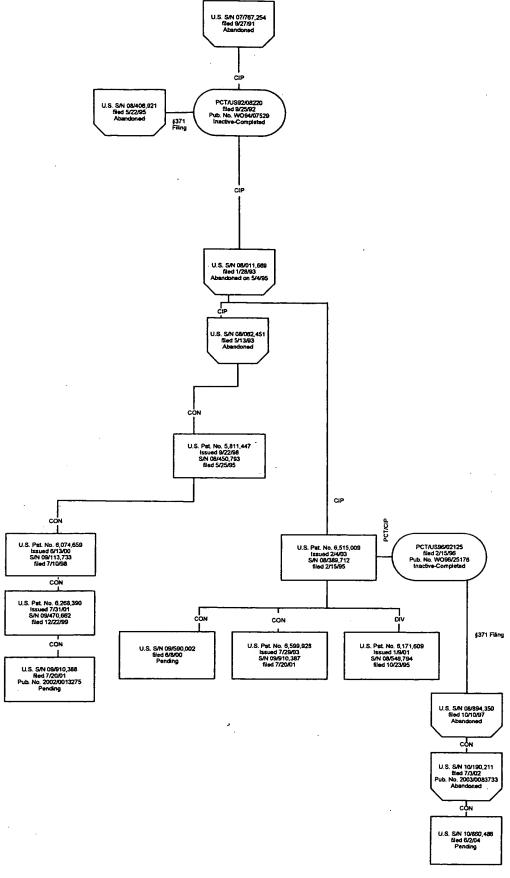
(Reg. No. 42,412)

JONES DAY LLP 222 East 41st Street New York, NY 10017

By: Catharina J. Chin Eng

(212) 326-3939





December 18, 1990

Lawrence L. Kunz, DVM Experimental Pathologist NeoRx 410 West Harrison Seattle, WA 98119

Dear Larry: -

Enjoyed visiting with you in Phoenix at the American College of Veterinary Pathologists meeting. Sounds like you are staying busy and also having a good time. Enclosed is a brief outline explaining the significance of restenosis after percutaneous transluminal coronary angioplasty (PTCA) and the possible mechanisms that we discussed for directing the delivery of compound to these angioplasty lesions. As we discussed, numerous investigators are trying to develop techniques for preventing restenosis after PTCA. This is a very "hot" area of research and I am excited about the possibility of developing a directed approach to treatment. This will be a very interesting line of investigation. Let me know if you need a more detailed write-up or if you need additional

Hope you have a Merry Christmas and a Happy New Year. I look forward to hearing

Best regards

Peter G. Anderson, D.V.M., Ph.D.

(205) 934-2414

Enclosure

Exhibit # CAPTEDS 1- Kunz Deponent_ Reporter TIA REIDT Naegeli Reporting Corporation (800) 528-3335 FAX (503) 227-7123

NeoRx 100001

, HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY

ANTIBODY DIRECTED DELIVERY OF COMPOUNDS TO CONTROL SMOOTH MUSCLE CELL PROLIFERATION AFTER PERCUTANEOUS TRANSLUMINAL CORONARY ANGIOPLASTY

Peter G. Anderson, DVM, PhD & Lawrence L. Kunz, DVM

Percutaneous transluminal coronary angioplasty (PTCA) has gained favor as the primary treatment modality in many patients with coronary artery disease. PTCA can relieve myocardial ischemia in patients with coronary artery disease by reducing lumen obstruction and improving coronary flow. Over 200,000 PTCA procedures were performed in 1988 and recent reports estimate that over 500,000 PTCAs will be performed per year by 1991 (1). Despite improvements in equipment and operator expertise the restenosis rate after PTCA remains a significant problem, with from 13 to 48% of patients developing restenosis by 1 to 3 months after successful dilatation. This restenosis results in significant morbidity and mortality and necessitates further interventions.

The mechanisms responsible for restenosis after PTCA are not well understood. The restenotic lesion consists of an exuberant overgrowth of smooth muscle cells. This neointimal proliferation of smooth muscle cells has been well characterized in humans and in several animal model systems, however the mechanisms responsible for the smooth muscle cell growth are not know. Many investigators have evaluated factors that control smooth muscle cell growth and from the results of these studies have suggested possible mechanisms for controlling smooth muscle cell proliferation after PTCA (2-4). To date, no successful interventions have proven effective in preventing restenosis.

A successful procedure for prevention of smooth muscle cell proliferation after PTCA would be of great clinical importance. There are numerous compounds that could prevent smooth muscle cell proliferation, however many of these compounds have untoward systemic effects that severely detract from their therapeutic usefulness. In order to more efficiently prevent restenosis after PTCA, compounds that prevent smooth muscle cell proliferation must be delivered directly to the site of PTCA. Binding antiproliferative compounds to antibodies that will specifically attach to and be internalized by smooth muscle cells could result in selective prevention of smooth muscle cell proliferation without causing adverse systemic effects. A compound such as heparin which is known to suppress

NeoRx 100002

HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY

المراجع والمعارضة

smooth muscle cell proliferation could be delivered locally to prevent restenosis without the severe problems associated with systemic anticoagulation. Other cytotoxic substances that will either kill smooth muscle cells (toxins) or prevent cell division (colchicine, methotrexate, adriamycin, etc.) could also prevent restenosis if delivered to the PTCA site. A balloon catheter system that could be used to deliver the smooth muscle cell specific antibodies with bound cytotoxic compounds is currently available (5).

Prevention of smooth muscle cell proliferation at the site of PTCA without causing adverse systemic effects could be achieved by directing drug therapy to the smooth muscle cells. This could be accomplished by binding the efficacious drugs to antibodies specific for smooth muscle cell surface membranes. When these antibody-drug conjugates are internalized, the drug will be delivered directly to the target smooth muscle cells. The balloon delivery system is currently available and could be used to locally infuse the antibody-drug conjugate to the PTCA site. These treatment modalities could prove successful in preventing restenosis after PTCA.

- 1. Detre et al. New Engl J Med 318:265-270, 1988
- 2. Fanelli C & Arnoff R. Amer Heart Journal 119:357-368, Feb. 1990
- 3. Popma JJ & Topol EJ. Amer J Med 88:16N-24N, Jan. 1990
- 4. Liu et al. Circulation 79:1374-1387, June 1989
- 5. Nabel et al. Science 1342-1344, 1989

NeoRx 100003

. HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY

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	Pag	e 1			Page
4	IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE	İ	1	INDEX	Page
¥ .	2	- 1	2 3	EVANTUATION	
1	3 BOSTON SCIENTIFIC SCIMED, Inc.; and BOSTON SCIENTIFIC CORPORATION,		4.	- EXAMINATION	•
	4 Plaintiff,			ness Name Page	
t	CIVIL ACTION FILE 5 VS. NO. 03-282-51 P		5		
	5 Vs. NO. 03-283-SLR 6 CORDIS CORPORATION; and		6	er G. Anderson, Ph.D.	
	JOHNSON & JOHNSON, INC.,	- 1		Mr. Timmons 6	
	7 Defendant.	ł	<i>7</i> B		
	8		9	EXHIBITS	
	9 IN THE UNITED STATES DISTRICT, COURT	1	0	CAMPITS.	
1	FOR THE DISTRICT OF DELAWARE	1			
	1 BOSTON SCIENTIFIC SCIMED, INC., and	1	2 1	Letter dated 1/14/05 to Frederick L. 5 Cottrell, III from Lawrence K.	
	BUSTON SCIENTIFIC CORPORATION,	1	3	Nodine plus attachment	0
•	2 Plaintiffs and Counterclaim Defendants,	14	4 2	Notice of Subpoena Directed to the 8	
1	3	1!	5	UAB Research Foundation	
•	CIVIL ACTION NO. 4 vs. 03-1138-518		3	Curriculum Vitae for Peter Glennie 11	
	5 CORDIS CORPORATION, JOHNSON & JOHNSON	10		Anderson	
	INC., GUIDANT CORPORATION, GLITDANT	17	7 4	Multi-page document Bates stamped 18 UAB 01114 through 01117	
10	6 SALES CORPORATION, and ADVANCED CARDIOVASCULAR SYSTEMS, INC.,	18	1	OUT OTTI BROOM! UTIL/	
1	7 Defendants and Counterclaim		5	Laboratory Investigation, Effect of 48	
18	Plaintiffs.	19	ı	Local Delivery of Heparin and Methotrexate on Neolintimal	*
19		20		Proliferation in Stented Porcine	•
20	VIDEOTAPED DEPOSITION OF PETER G. ANDERSON, Ph.D.,			Coronary Arteries	
2	The deposition of PETER G. ANDERSON, Ph.D., was	21	6	Letter dated 3/19/92 from Johnson 91	
:29 21	taken before Sharon A. Gabrielli, RPR. commencing at	22		Sundsmo to Lawrence Kunz and Peter	
22	a.m., on January 18, 2005, at the law offices of Baich & Bingham, 1901 6th Avenue North, Birmingham,	23		Anderson	
	Alabama	4	7	University of Alabama at Birmingham 92	
23 24		24		Internal Requisition, Bates stamped	
24 25		25		UAB 1092 through 1106	
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1	Page	,			
1	APPEARANCES	1		EXHIBITS (CONTINUED)	Page 4
2	Appearing For the Plaintiff: THOMAS 1. MELORO, ESQ.	2	Exhibi	t Description Page	
	Kenyon & Kenyon	3		•	
•	One Broadway New York, New York 10004-1050	4	8	Letter dated 7/16/91 to Peter J. 97 Newman from Debra K. Leith plus	
5	212.425.7200	1 '		attachment, Bates labeled UAB 01043	
6	Appearing For the Defendant Cordis Corporation and Johnson & Johnson:	5	_	through UAB 01054	
7	•	6	9	Letter dated 6/23/93 to Peter G. 130 Anderson from Sue Lintott plus	
8	MICHAEL J. TIMMONS, ESQ. Patterson, Belknap, Webb & Tyler	7		attachment, Bates labeled UAB 985	
_	1133 Avenue of the Americas	1 .		through 989	
9	New York, New York 10036-6710 212.336.2000	1 8	10	Letter dated 11/1/94 to Peter G. 132	
10		9		Anderson from Sue E. Lintott plus	
11	Appearing For the Defendant the Guidant entities and Advanced Cardiovascular Systems, Inc:			attachment, Bates stamped UAB 01081	
12	EDWARD A. MAS, II, ESQ.	10		through 01084	
13	McAndrews, Heid & Malloy, Ltd. 500 West Madison Street	1 "	11	Assignment Bates stamped NEORX 140	
	34th Floor	12		031432 through 031434	
14	Chicago, Illinois 60661 312.775.8000	13	12	Abstract From the 67th Scientific 150	
15		14		Sessions at circulation 90:I-297, 1994 NeoRx 39754	
16	Appearing For the Deponent and University of Alabama Research Foundation:	15	13	Fax transmission sheet from Peter 163	
17	•	16		G. Anderson to Janet Embretson,	
18	Lawrence K. Nodine, Esq. Tina Williams McKeon, Ph.D., Esq.			dated 1/30/03 plus attachment, Bates stamped BSM 9146 through 49	
	JEFFREY BRICKMAN, ESQ.	17		·	
19	Needle & Rosenberg, P.C. 999 Peachtree Street	18	14	U.S. Patent number 5,811,447 163	
20	Suite 1000	1 10	15	Letter dated 10/8/04 to Thomas J. 197	•
21	Alfanta, Georgia 30309-3915	19		Meloro from Lawrence K. Nodine plus	
21 22	678.420.9300			attachment, Bates stamped UAB 01089	
	Also Present:	20 21		through 01091	
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1	·	1	
2	, ,	2	
3	heparin delivered into the adventitia with a rat 11:15:05 AM	3	2007.00
4	carotid artery injury model." 11:15:06 AM	4	(c) (m) (m) (m)
5	Do you know where the smooth musde 11:15:09 AM	5	the page 1 to proceed the transfer that the page 12 Marie
6	cell proliferation in Edelman took place; was it 11:15:13 AM	6	
7	within the artery itself? 11:15:17 AM	7	spectrophotometric assay for heparin did 11:17:53 AM
8	A. I didn't do those experiments, so I 11:15:20 AM	8	demonstrate that heparin was continuously 11:17:56 AM
9 10	couldn't tell you definitively. 11:15:23 AM	9	released over two to three weeks with this 11:17:58 AM
11	Q. At the bottom of that page, in the 11:15:53 AM	10	, , , , , , , , , , , , , , , , , , , ,
12	right-hand corner, the first sentence of the 11:15:54 AM	11	low and may simply not be adequate to inhibit 11:18:01 AM
13	last paragraph reads, "On the basis of the above 11:15:55 AM	12	
14	studies, heparin was chosen in our study as a 11:15:58 AM drug with a high likelihood of inhibiting smooth 11:16:01 AM	13	Was one of the other possible 11:18:08 AM
15		14	problems with this study is that the dosage of 11:18:10 AM
16	muscle cell proliferation." Do you agree with 11:16:05 AM that statement? 11:16:10 AM	15	heparin was too low? 11:18:13 AM
17	MR. NODINE: Objection to 11:16:12 AM	16	MR. NODINE: Objection to form, lack 11:18:16 AM
18	objection to form and objection to lack of 11:16:11 AM	17 18	of foundation. 11:18:17 AM
19	foundation. 11:16:13 AM	19	THE WITNESS: I think those two mean 11:18:22 AM the same thing.
20	THE WITNESS: Yes. 11:16:24 AM	20	the same thing. 11:18:25 AM Q. (By Mr. Timmons) Okay. And the last 11:18:27 AM
21	Q. (By Mr. Timmons) Okay. And the rest 11:16:24 AM	21	
22	of that paragraph talks about some of the 11:16:27 AM	22	sentence reads, "site-specific drug delivery by 11:18:28 AM polymers has only recently been applied to the 11:18:32 AM
23	reasons — some of the factors that may have 11:16:30 AM	23	problem of restenosis; improvements in polymer 11:18:35 AM
24	contributed to the failure of the heparin to 11:16:34 AM	24	
25	inhibit smooth muscle cell growth in the study; 11:16:36 AM	25	design and performance that allow higher 11:18:37 AM concentrations of effective drugs may better 11:18:39 AM
			Concentrations of effective drugs they better 11.10.39 Ally
	Page 58		Page 60
1	do you see that? 11:16:39 AM	1	Page 60 inhibit neointimal proliferation." 11:18:41 AM
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	Page 61
1	videotape number 2 in the deposition of Peter 11:27:13 AM
2	Anderson. We are back on the record, 11:27 11:27:16 AM
3	a.m. 11:27:19 AM
4	Q. (By Mr. Timmons) Dr. Anderson, I've 11:27:21 AM
5	provided you with a three-page document that was 11:27:21 AM
6	previously marked as Kunz Exhibit 6. It's NeoRx 11:27:26 AM
7	1000 no, 10001 through 10003. And my 11:27:31 AM
8	question is whether or not you recognize this 11:27:37 AM
9	document? 11:27:39 AM
10	A. Yes. 11:27:41 AM
11	Q. What is it? 11:27:41 AM
12	A. It's a letter and attached 11:27:44 AM
13	description that I wrote. 11:27:51 AM
14	Q. Did you write the letter or the 11:27:58 AM
15	description or both? 11:28:02 AM
16	A. Both. 11:28:05 AM
17	Q. Okay. And who was Dr. Kunz in 11:28:05 AM
18	December 1990? 11:28:11 AM
19	MR. NODINE: Objection to form. 11:28:14 AM
20	THE WITNESS: He was an acquaintance 11:28:18 AM
21	of mine. 11:28:19 AM
22	Q. (By Mr. Timmons) How did it come 11:28:29 AM
23	about that you drafted the description on the 11:28:30 AM
24	second two pages of Kunz Exhibit 6? 11:28:35 AM
25	A. What do you mean by "how did it come 11:28:45 AM

```
Page 63
         Q. Do you know if Dr. Kunz had done any
                                                   11:30:34 AM
    work in this post-injury restenosis problem
                                                  11:30:37 AM
     prior to December 18th, 1990?
                                                11:30:41 AM
            MR. NODINE: Objection to form,
                                                 11:30:47 AM
    vague, ambiguous.
                                             11:30:47 AM
            THE WITNESS: I can only comment on
                                                    11:30:50 AM
    what he told me tell at the time or what I
                                                  11:30:52 AM
    recall that he told me at the time. And in his
                                                 11:30:54 AM
    discussions with me, he made it clear that he
                                                   11:30:59 AM
    did not know anything about the - the
10
                                                  11:31:07 AM
11
    angioplasty or the problem of restenosis.
                                                  11:31:10 AM
12
         Q. (By Mr. Timmons) Okay. Did you also 11:31:15 AM
13 have knowledge regarding the possible mechanisms 11:31:17 AM
                                                   11:31:20 AM
    for directing the delivery of compounds to the
    angioplasty lesions prior to meeting with
                                                 11:31:23 AM
    Dr. Kunz in December 1990?
                                                11:31:27 AM
16
         A. Can you rephrase or - or say that
17
                                                11:31:31 AM
18
    again?
                                         11:31:37 AM
19
         Q. (By Mr. Timmons) My question is
                                                  11:31:37 AM
20 whether or not you -- prior to your meeting with 11:31:39 AM
    Dr. Kunz at this meeting in Phoenix, did you
                                                  11:31:40 AM
    have knowledge regarding the possible mechanisms 11:31:44 AM
    for directing the delivery of compounds to the
                                                   11:31:47 AM
24
    angioplasty lesions?
                                            11:31:50 AM
25
         A. Yes.
                                        11:31:56 AM
```

	Page 62
1	about" — 11:28:46 AM
2	Q. Why did you 11:28:47 AM
3	A specifically? 11:28:49 AM
4	Q. Why did you draft the description? 11:28:49 AM
5 '	A. As stated in the — the cover letter, 11:28:56 AM
6	Dr. Kunz and I met just fortuitously, we both 11:28:59 AM
7	happened to be attending the same meeting, and 11:29:09 AM
8	we met at that meeting, discussed our jobs, and 11:29:12 AM
9	through that discussion, developed a - a - 11:29:18 AM
10	realized we had some mutual interests, 11:29:26 AM
11	scientific interests. So he asked me to write 11:29:29 AM
12	up a description of the area of our mutual 11:29:34 AM
13	interest. 11:29:42 AM
13 14	interest. 11:29:42 AM Q. When you met with Dr. Kunz in Phoenix 11:29:46 AM
14	Q. When you met with Dr. Kunz in Phoenix 11:29:46 AM
14 15	Q. When you met with Dr. Kunz in Phoenix 11:29:46 AM in 1990, did you already was your interest in 11:29:52 AM
14 15 16	Q. When you met with Dr. Kunz in Phoenix 11:29:46 AM in 1990, did you already was your interest in 11:29:52 AM the significance of restenosis after 11:29:59 AM
14 15 16 17	Q. When you met with Dr. Kunz in Phoenix 11:29:46 AM in 1990, did you already — was your interest in 11:29:52 AM the significance of restenosis after 11:29:59 AM percutaneous transluminal coronary 11:30:04 AM
14 15 16 17 18	Q. When you met with Dr. Kunz in Phoenix 11:29:46 AM in 1990, did you already — was your interest in 11:29:52 AM the significance of restenosis after 11:29:59 AM percutaneous transluminal coronary 11:30:04 AM angioplasty? 11:30:04 AM
14 15 16 17 18 19	Q. When you met with Dr. Kunz in Phoenix 11:29:46 AM in 1990, did you already — was your interest in 11:29:52 AM the significance of restenosis after 11:29:59 AM percutaneous transluminal coronary 11:30:04 AM angioplasty? 11:30:04 AM A. That was in — in general terms, at 11:30:07 AM
14 15 16 17 18 19	Q. When you met with Dr. Kunz in Phoenix 11:29:46 AM in 1990, did you already was your interest in 11:29:52 AM the significance of restenosis after 11:29:59 AM percutaneous transluminal coronary 11:30:04 AM angioplasty? 11:30:04 AM A. That was in in general terms, at 11:30:07 AM that time, my interest was in cardiovascular 11:30:13 AM
14 15 16 17 18 19 20 21	Q. When you met with Dr. Kunz in Phoenix 11:29:46 AM in 1990, did you already was your interest in 11:29:52 AM the significance of restenosis after 11:29:59 AM percutaneous transluminal coronary 11:30:04 AM angioplasty? 11:30:04 AM A. That was in in general terms, at 11:30:07 AM that time, my interest was in cardiovascular 11:30:13 AM pathology. One component of the types of 11:30:16 AM
14 15 16 17 18 19 20 21	Q. When you met with Dr. Kunz in Phoenix 11:29:46 AM in 1990, did you already — was your interest in 11:29:52 AM the significance of restenosis after 11:29:59 AM percutaneous transluminal coronary 11:30:04 AM angioplasty? 11:30:04 AM A. That was in — in general terms, at 11:30:07 AM that time, my interest was in cardiovascular pathology. One component of the types of 11:30:16 AM research that I was interested in and working on 11:30:22 AM

1.	Q. Okay. Did Dr. Kunz, to the extent 11:31:57 AM
2	that he told you or or indicated to you, did 11:32:00 AM
3	he have any prior knowledge regarding the 11:32:02 AM
4	mechanisms for directing the delivery of 11:32:06 AM
5	compounds to angioplasty lesions? 11:32:08 AM
6	A. Again, if he did, he didn't share it 11:32:13 AM
7	with me at that point in time. 11:32:17 AM
8	Q. Did Dr. Kunz have any knowledge 11:32:22 AM
9	regarding the directing the delivery of 11:32:25 AM
10	compounds to any particular locations in the 11:32:28 AM
11	body for therapeutic uses? 11:32:32 AM
12	MR. NODINE: Objection to form, calls 11:32:38 AM
13	for speculation. 11:32:38 AM
14	Q. (By Mr. Timmons) To the extent 11:32:38 AM
15	that that they were discussed at your meeting 11:32:38 AM
16	with him in Phoenix? 11:32:43 AM
17	A. During our meeting, he did describe 11:32:46 AM
18	some of the approaches that NeoRx was using to 11:32:47 AM
19	direct therapy to cancer cells. 11:32:54 AM
20	Q. What were the NeoRx NeoRx 11:32:58 AM
21	approaches to directing therapy to cancel - 11:33:01 AM
22	cancer cells that Dr. Kunz told you about? 11:33:04 AM
23	A. He as I recall, and 15 years ago, 11:33:11 AM
24	as I recall, he described the general approach 11:33:15 AM
25	that NeoRx was using of targeted antibodies. 11:33:20 AM

Page 64

	Page 10	05	
1	THE WITNESS: Yes. 01:48:55 PM	1 1	and the the
2	Q. (By Mr. Timmons) What are the 01:48:55 PM	2	consistent with
3	applications? 01:48:56 PM	3	and I had relat
4	A. I can't - I can't list the exact - 01:49:02 PM	4	restenosis in va
5	the numbers or the names. 01:49:04 PM	5	Q. (By Mr
6	Q. Um-hmm. 01:49:09 PM	6	yourself an inv
7	A. But as I mentioned earlier, I — I 01:49:09 PM	7	application?
8	did a search on the patent office web site and 01:49:11 PM	8	MR. NO
9	found several patents that were related, had - 01:49:15 PM	9 ا	calls for a legal
10	had parts of them related to using 01:49:23 PM	10	But you
11	immunoconjugates for restenosis. 01:49:25 PM	11	know.
12	Q. Okay. And you were a co-inventor on 01:49:31 PM	12	THE W
13	those patents or an inventor on those patents? 01:49:33 PM	1 13	I was involved
14	A. Some I was and some I wasn't. Some I 01:49:37 PM	1 14	developing this
15	was listed as an inventor, some I was not listed 01:49:45 PM	15	can't specificall
16	as an inventor. 01:49:47 PM	16	or not.
17	Q. Do you consider yourself an inventor 01:49:51 PM	17	Q. (By Mr
18	of the ones in which you were not listed as an 01:49:53 PM	18	you're not a par
19	inventor? 01:49:56 PM	19	A. Yes.
20	MR. NODINE: Objection 01:49:57 PM	20	Q. Okay.
21	MR. MELORO: Objection. 01:49:58 PM	21	as to whether o
22	MR. NODINE: vague, calls for 01:50:00 PM	22	1?
23	speculation, lack of foundation. 01:50:01 PM	23	MR. ME
24	THE WITNESS: I'm not a patent 01:50:04 PM	24	answered.
25	attorney, so I can't say whether I should have 01:50:05 PM	25	THE WI
	· · · · · · · · · · · · · · · · · · ·		

		Page 107
1	and the the strategy described in claim 1 is	
2	consistent with the discussions that Larry Kunz	
3	and I had relating to this — to the issue of	
4	restenosis in vascular smooth muscle cells.	01:54:34 PM
5	Q. (By Mr. Timmons) Do you consider	01:54:38 PM
6	yourself an inventor of claim 1 of this patent	01:54:38 PM
7	application? 01:54:	41 PM
8	MR. NODINE: Objection, insofar as it	01:54:43 PM
9	calls for a legal conclusion. 01:	54:44 PM
10	But you may answer, insofar as you	01:54:46 PM
11	know. 01:54:4	
12	THE WITNESS: As stated before, I	01:54:51 PM
13	I was involved in developing this intimately	01:54:53 PM
14	developing this idea and this strategy, but I	
15	can't specifically determine if I'm an inventor	
16	or not. 01:55:09	
17	Q. (By Mr. Timmons) Is that because	01:55:10 PM
18	•	1:55:11 PM
19	A. Yes. 01:55:14	ł PM
20	Q. Okay. Do you have any understanding	01:55:15 PM
21	as to whether or not you're an inventor of claim	•
22	1? 01:55:23	
23	MR. MELORO: Objection, asked and	01:55:25 PM
24	answered. 01:55:	
25		01:55:30 PM

		D 406
1	been or - or whether legally I I should have	Page 106
2	been. 01:50:13	
3	(Whereupon, there was a discussion off the	
4	written record) 01:51:	
5	,	
6	Q. (By Mr. Timmons) Let me mark	
7	whoops. It was already marked as Klein Exhibit	
-	10, PCT U.S. 928220 patent application. If you	
8	could pass the extra one on to your counsel,	
9	please. 01:51:20	
10	Have you seen this document before?	
11	 A. I have not seen this document in this 	01:52:23 PM
12	form. As before, several of the the figures	01:52:28 PM
13	and tables with experimental data are ones	
14	that is data that I have seen, that I did see	01:52:43 PM
15	previous. 01:52:48	
16	Q. Okay. If you would turn to page 84	01:53:19 PM
17		53:24 PM
18	A. Okay. 01:53:25	PM
19	0 0 11	01:53:26 PM
20	yourself. 01:53:28	
21	A. Okay. 01:53:54	
 22	0 511 1	01:53:56 PM
23	1-1: - 40	
23 24	01.55.50	• • •
-	MR. MELORO: Objection to form.	
25	THE WITNESS: The the methodology	01:54:06 PM

	Page 108
1	contains many ideas that Larry Kunz and I 01:55:32 PM
2	collectively developed in our in our 01:55:40 PM
3	combined — in our collaboration and our — our 01:55:45 PM
4	interactions as as co-investigators. 01:55:50 PM
5	Q. (By Mr. Timmons) Okay. If you would 01:55:56 PM
6	turn back to the first page, please. Do you 01:55:59 PM
7	see, under international filing date, that this 01:56:04 PM
8	was filed on September 25th, 1992, in the 01:56:07 PM
9	left-hand column? 01:56:11 PM
10	A. Yes. 01:56:14 PM
11	Q. Okay. And under inventor and 01:56:14 PM
12	inventor applicant, do you see that Dr. Kunz is 01:56:17 PM
13	the only listed inventor? 01:56:21 PM
14	A. Yes. 01:56:25 PM
15	Q. Do you know why you were not named as 01:56:25 PM
16	an inventor in PCT application U.S. 92/08220? 01:56:29 PM
17	A. No, I do not. 01:56:37 PM
18	Q. Did you ever have any discussions 01:56:38 PM
19	with Dr. Kunz as to whether or not you should be 01:56:39 PM
20	an inventor on this application? 01:56:42 PM
21	A. No. 01:56:46 PM
22	Q. This is a yes or no question. Did 01:56:50 PM
23	you have any discussion with your attorneys as 01:56:52 PM
24	to whether or not you should be named an 01:56:54 PM
25	inventor on the PCT application of Klein Exhibit 01:56:56 PM

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	:	Page 109
1	10? 01:57:00	
2	MR. NODINE: Objection, insofar as it	01:57:02 PM
3	calls for revealing attorney-dient 01	:57:04 PM
4	communications. 01:5	57:06 PM
5	You may answer the question only yes	01:57:07 PM
6	or no, but don't reveal the substance of any	01:57:08 PM
7	communications. 01:5	7:11 PM
8	THE WITNESS: No. 01	:57:15 PM
9	Q. (By Mr. Timmons) Okay. Have you	01:57:17 PM
10	ever discussed with any representative of Bosto	on 01:57:18 PM
11	Scientific whether or not should be a named	01:57:24 PM
12	inventor on this patent application of Klein	01:57:26 PM
13	Exhibit 10? 01:57:2	8 PM
14	A. To the best of my knowledge, no.	01:57:32 PM
15	Q. Let me give you, Dr. Anderson, a	01:59:01 PM
16	document that was previously marked as Kunz	01:59:06 PM
17	Exhibit 14. It's a two-page letter dated April	01:59:08 PM
18	15th, 1993, from Lucy Hicks to Debra Leith,	01:59:13 PM
19	NeoRx 10020 through 21. If you could just tak	e 01:59:22 PM
20	a look at that and let me know if you've seen	01:59:32 PM
21	that before. 01:59:3	4 PM
22	A. Yes, I think I I have have seen	02:00:12 PM
23	this before. 02:00:1	
24	Q. Did you receive a copy of this at	2:00:19 PM
25		02:00:21 PM

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Page 111
 1
            The next CIP file, this PCT, is filed 02:02:07 PM
    September 25th, 1992. Do you understand that to 02:02:13 PM
 2
 3
    be a reference to that PCT application we looked 02:02:17 PM
    at earlier?
                                          02:02:20 PM
 5
            MR. NODINE: Objection, lack of
                                                  02:02:24 PM
    foundation.
 6
                                           02:02:25 PM
 7
         Q. (By Mr. Timmons) Klein Exhibit 10.
                                                  02:02:26 PM
 8
         A. So in - in the memo here, this CIP
                                                  02:02:29 PM
 9
    filed as a PTC -
                                            02:02:32 PM
10
         O. Yes.
                                          02:02:34 PM
11
         A. — that refers to this — this PTC
                                               02:02:34 PM
12
    that we just looked at?
                                              02:02:40 PM
                                                02:02:42 PM
13
         Q. That's my question, yeah.
            MR. NODINE: Yeah, I believe -- to
14
                                                  02:02:44 PM
15
    darify, I believe that is your question.
                                                02:02:45 PM
            MR. TIMMONS: That's my question,
16
                                                    02:02:47 PM
17
                                         02:02:48 PM
    ves.
18
            MR. NODINE: That's not a
                                                02:02:48 PM
19
    representation, right?
                                             02:02:49 PM
20
            MR. TIMMONS: Yes.
                                                02:02:52 PM
21
            THE WITNESS: I - no, I -- until you 02:02:52 PM
    just said that, I didn't know that this was the
                                                  02:02:54 PM
23
    same as that.
                                            02:02:56 PM
         Q. (By Mr. Timmons) Okay. Let me give
24
                                                    02:03:00 PM
    you, then, a copy of Klein Exhibit 11, which is
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Page 110 1 A. I know that when I went back through 02:00:27 PM 2 my files to give everything to you for the 02:00:29 PM 3 subpoena, that - that this was one of the 02:00:34 PM documents in there. So I assume I must have 02:00:36 PM 5 received it at approximately that time. 02:00:39 PM 6 Q. And I just note for the record that 02:00:42 PM Dr. Anderson is a -- a copy recipient on this 7 02:00:43 PM 8 letter. Do you see that? 02:00:47 PM 9 A. Yes. 02:00:49 PM 10 Q. Okay. Who was Lucy Hicks? 02:00:49 PM 11 MR. NODINE: Objection to form. 02:00:58 PM 12 THE WITNESS: Lucy Hicks worked at 02:01:00 PM the UAB Research Foundation, and I don't know --13 02:01:03 PM 14 you know, her -- her title is here on the -- on 02:01:07 PM the letter, but she was the - the legal contact 02:01:12 PM 15 16 person that if I had any questions related to 02:01:17 PM 17 the NeoRx - you know, anything that I was doing 02:01:23 PM 18 with NeoRx, I would usually send things to her. 02:01:27 PM 19 Q. (By Mr. Timmons) Okay. Let me just 02:01:38 PM 20 sort of do some housekeeping. The first patent 02:01:42 PM 21 application listed in the regards lines is -- in 02:01:47 PM the reference line is the 767254 application. 02:01:52 PM And I'll represent to you that is Klein Exhibit 02:01:55 PM 9 that we've looked at today. That's the --02:01:58 PM that's that one, okay. 02:02:04 PM

Page 112 a file history for application 08/011,669, which 02:03:06 PM was filed on January 28th, 1993, and ask you if 02:03:13 PM 3 you've seen that application before. 02:03:16 PM 4 That's one for your counsel. Why 02:03:24 PM 5 don't you give your counsel the one with the 02:03:25 PM 6 rubber band on it. The staples didn't go 02:03:27 PM 7 through so well. Sorry. 02:03:30 PM 8 MR. TIMMONS: Why don't - why don't 02:03:48 PM 9 we -- while you're looking at that, why don't we 02:03:48 PM 10 change the tape. 02:03:49 PM 11 THE VIDEOGRAPHER: This marks the end 02:03:51 PM 12 of videotape number 2 in the deposition of Peter 02:03:51 PM 13 Anderson. We are going off the record, 2:03 02:03:54 PM 14 02:03:58 PM 15 (Whereupon, there was a brief recess.) 02:06:07 PM 16 THE VIDEOGRAPHER: Here begins 02:06:12 PM videotape - excuse me. Here begins videotape 02:06:12 PM 18 number 3 in the deposition of Peter Anderson. 02:06:16 PM 19 We are back on the record, 2:06 p.m. 02:06:18 PM 20 Q. (By Mr. Timmons) I think there's a 02:06:24 PM 21 question on the record of whether or not you've 02:06:24 PM 22 ever seen this document before, but take what 02:06:26 PM 23 you need to do the reviewing. 02:06:27 PM 24 A. I have never seen this document 02:06:32 PM before, this particular printing of the 02:06:37 PM

	Page 113
1	document — or this — this format. 02:06:41 PM
2	Again, the the text, some of the 02:06:45 PM
3	tables and pictures are familiar to me and look 02:06:49 PM
4	like the the, you know, regular 8 and a half 02:06:57 PM
5	by 11 printed version that — that NeoRx usually 02:07:05 PM
6	mail — you know, sent to me in Birmingham. 02:07:10 PM
7	Q. (By Mr. Timmons) If you could turn 02:07:15 PM
8	to page 115 of the document. And if you would 02:07:21 PM
9	read claims 1 and 2 to yourself, please. 02:07:25 PM
10	A. Okay. 02:07:55 PM
11	Q. Did you have any contribution to 02:07:56 PM
12	what's disclosed in claims 1 and 2? 02:07:58 PM
13	MR. NODINE: Objection to form, vague 02:08:01 PM
14	and ambiguous. 02:08:04 PM
15	THE WITNESS: Yes. 02:08:07 PM
16	Q. (By Mr. Timmons) And what was your 02:08:08 PM
17	contribution? 02:08:09 PM
18	A. The specific again, through our 02:08:18 PM
19	discussions my discussions with Dr. Kunz, we 02:08:24 PM
20	had discussed and formulated an approach of 02:08:27 PM
21	using cytostatic agents to inhibit 02:08:34 PM
22	proliferation, smooth muscle cell proliferation, 02:08:39 PM
23	contraction, and migration. 02:08:44 PM
24	And we had also discussed previously 02:08:50 PM
25	the approach or the idea of using binding 02:08:51 PM

		Page 115
1	any knowledge regarding restenosis at that	02:10:35 PM
2	point, in December of 1990; is that correct?	02:10:43 PM
3	A. Correct. 02:10	D:46 PM
4	MR. NODINE: Objection to the	02:10:47 PM
5	recharacterization of prior testimony.	02:10:47 PM
6	Q. (By Mr. Timmons) Okay. If you wo	uld 02:10:49 PM
7	put this document aside for one second and	then 02:10:50 PM
8	turn back to the letter, please. Don't don't	02:10:53 PM
9	let it go too far because I'm going to have a	02:10:56 PM
10	question about it. 02:	10:59 PM
11	The third in the the reference	02:11:01 PM
12	line, it says USCIP of CIP filed January 28th,	02:11:02 PM
13	1993, inventors Kunz and Klein. Do you know	v if 02:11:08 PM
14	that — that line is a reference to the	02:11:11 PM
15	application 011669 of Klein Exhibit 11?	02:11:14 PM
16	A. Do I know now or or did I know	02:11:26 PM
17	when I got this memo?	02:11:27 PM
18	Q. Did you know when you got the mer	no? 02:11:29 PM
19	A. When I got the memo, I had a copy	02:11:34 PM
20	or knew of a an application that I can't say	02:11:38 PM
21	for certain is this application, but I knew of	02:11:48 PM
22	an application that was being filed.	02:11:52 PM
23	Q. Okay. Do you know now that this	02:11:55 PM
24	third line under the re is this 669 application,	02:11:56 PM
25	Klein Exhibit 11? 02::	12:03 PM

	· ·	Page 114
1	peptides, immunopeptides, to facilitate that	02:08:57 PM
2	process. 02:09:	02 PM
3	Q. The first claim doesn't talk about	02:09:06 PM
4	the binding peptides or proteins, correct?	02:09:08 PM
5	A. Correct. 02:09:	11 PM
6	Q. Your — what was your contribution to	02:09:13 PM
7	daim 1 between you and Dr. Kunz?	02:09:15 PM
8	MR. MELORO: Objection, vague and	02:09:22 PM
9	ambiguous, lack of foundation.	02:09:23 PM
10	MR. NODINE: And for darity, you	02:09:26 PM
11	you're talking about what was originally	02:09:26 PM
12	denominated claim 1? 02	2:09:28 PM
13	MR. TIMMONS: What daim 1 is here of	on 02:09:31 PM
14		32 PM
15	MR. NODINE: Right. 02	:09:34 PM
16	THE WITNESS: Dr. Kunz and I had	02:09:43 PM
17	discussed using cytostatic agents to inhibit the	02:09:44 PM
18	pathologic activities associated with	02:09:54 PM
19	restenosis. 02:09:	59 PM
20	So claim 1, pretty much all all 03	2:10:08 PM
21	components of daim 1 were things that we ha	d 02:10:12 PM
22	discussed. 02:10:	15 PM
23	Q. (By Mr. Timmons) Okay. And I think	02:10:17 PM
24	that you said that prior to your discussions	02:10:27 PM
25	with Dr. Kunz, you did not believe that he had	02:10:31 PM

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Page 116
         A. Now that you've told me, and they
1
                                                 02:12:08 PM
    both have the same date.
                                              02:12:10 PM
3
         Q. Okay.
                                         02:12:11 PM
         A. I couldn't say for certain that --
                                              02:12:12 PM
    that this is the actual document that I reviewed 02:12:14 PM
    back in 1993.
                                          02:12:19 PM
7
         Q. If I could ask you, then, to look at 02:12:23 PM
8 the letter, the second paragraph, if you could
                                                  02:12:25 PM
    read the first sentence to yourself and -- and
                                                 02:12:30 PM
10 whatever else you need to read, but I'm going to 02:12:32 PM
11 ask you some questions about the first sentence
                                                    02:12:35 PM
12
    in the second paragraph.
                                              02:12:37 PM
13
         A. Okay.
                                         02:13:04 PM
14
         Q. Okay. And my first question will be 02:13:04 PM
15 whether or not you ever saw a preliminary
                                                  02:13:06 PM
16 disclosure of an invention submitted by Dr. Kunz 02:13:10 PM
17
    on January 16th, 1991?
                                             02:13:13 PM
18
        A. Let's see. We had discussed over the 02:13:28 PM
19 telephone several issues, and I'm not exactly
                                                  02:13:34 PM
    sure what -- you know, what preliminary
                                                  02:13:43 PM
    disclosure of invention -- you know, what
                                                 02:13:48 PM
    document this is referring to. I'd have to, you 02:13:51 PM
23
    know, be shown the document to be sure.
                                                   02:13:54 PM
24
        Q. Okay.
                                         02:14:01 PM
25
           MR. TIMMONS: Larry, this is directed 02:14:01 PM
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	Page 117	1	Page 119
1	•	1	
2	·	2	,
3		3	
4	privileged or whether or not it's not been 02:14:10 PM	4	2. 2.6 yez paraapata iii ariy
5	there. But one way or another, I'd request 02:14:11 PM	5	discussions between UAB Research Foundation and 02:16:49 PM
6	either that it be provided to us or some kind of 02:14:13 PM	6	NeoRx as to whether or not you should be 02:16:53 PM
7	log saying that we've got it and we'd like to — 02:14:16 PM	7	included as an inventor on subsequently filed 02:16:55 PM
8	and a claimed privilege on that, please. 02:14:19 PM	8	applications, patent applications 2 and 3, as 02:16:59 PM
9	MR. NODINE: All right. 02:14:23 PM	9	referenced above? 02:17:01 PM
10	Q. (By Mr. Timmons) Let me ask you 02:14:24 PM	10	A. I don't recall if I did if I did 02:17:08 PM
11	about the second clause in that sentence, where 02:14:24 PM	11	have any discussions with NeoRx related to these 02:17:13 PM
12	it says, "Dr. Anderson conceived the use of 02:14:26 PM	12	specific applications. 02:17:18 PM
13	NeoRx immunoconjugates as a form of 02:14:29 PM	13	Q. Okay. Do you know whether or not you 02:17:21 PM
14	administering therapeutic agents to suppress the 02:14:33 PM	14	were ever added as an inventor on the patent 02:17:23 PM
15	vascular smooth muscle proliferation as a result 02:14:36 PM	15	applications 2 and 3, as referenced before? 02:17:26 PM
16	of angioplasty trauma." Do you agree with that 02:14:40 PM	16	
17	statement? 02:14:43 PM	17	Q. You don't know? 02:17:34 PM
18	MR. NODINE: Objection to the form, 02:14:44 PM	18	A. I don't know. 02:17:35 PM
19	vague and ambiguous. 02:14:45 PM	19	Q. Okay. Let me provide you, 02:17:36 PM
20	THE WITNESS: The sentence was 02:14:48 PM	20	Dr. Anderson, with a document that was 02:18:07 PM
21	written by by Lucy Hicks. I would agree that 02:14:49 PM	21	previously marked as Kunz Exhibit 15, that's a 02:18:10 PM
22	Dr. Kunz and myself collectively discussed this 02:14:55 PM	22	multi-page document. After the fax cover sheet, 02:18:14 PM
23	issue. And, you know, aspects of it, I was more 02:15:05 PM	23	there's a letter from a Robert Schroff to 02:18:20 PM
24	familiar with, and other aspects, he was more 02:15:09 PM	24	Kenneth Roozen, June 14th, 1993, and you're 02:18:23 PM
25	familiar with. And together we formulated 02:15:13 PM	25	listed as a CC, NeoRx 100022 through 25. And my 02:18:29 PM
		ļ ——-	
1	Page 118 the the idea that is somewhat incompletely 02:15:16 PM	1	Page 120 question will be, have you ever seen that 02:18:46 PM
2	addressed by this sentence. 02:15:22 PM	2	
3	Q. Hopefully the next sentence I ask you 02:15:25 PM	3	
4	about will be more complete. If you turn to the 02:15:28 PM	4	A. I don't recall ever having seen this 02:19:16 PM document. 02:19:17 PM
5	next page. 02:15:30 PM	5	33.23.27 711
6	A. Okay. 02:15:31 PM	6	Q. Do you have any reason to believe you 02:19:20 PM
7	Q. And the first sentence reads, "In 02:15:31 PM	7	didn't receive a copy of this on June on or 02:19:22 PM
8	conclusion, Dr. Anderson, in conjunction with 02:15:34 PM	8	about June 14th, 1993? 02:19:25 PM
9	Dr. Kunz, were the persons who conceived the 02:15:36 PM		MR. NODINE: Objection, lack of 02:19:27 PM
10	invention of using NeoRx antibodies, either 02:15:39 PM	9	foundation. 02:19:28 PM
11	coupled directly to a therapeutic agent or bound 02:15:43 PM	10	MR. MELORO: Object to the ambiguity 02:19:31 PM
12	to the time release formulation of therapeutic 02:15:45 PM	11	as to whether you're referring to the document 02:19:32 PM
13	agent to target the therapeutic agent to the 02:15:48 PM	12 13	with the handwritten notations or not. 02:19:34 PM
14	site of vascular trauma or disease to inhibit 02:15:52 PM		THE WITNESS: If if I did receive 02:19:46 PM
15	restenosis." 02:15:57 PM	14	a carbon did receive a copy of the original 02:19:48 PM
16	My question is: Do you agree with 02:15:59 PM	15	memo, I didn't keep it in my files, so — so I 02:19:52 PM
17	that statement? 02:16:00 PM	16	can't I can't answer I can't recall if 15 02:20:03 PM
18	MR. NODINE: Objection, vague and 02:16:02 PM	17	years ago I got this memo or not - 02:20:08 PM
19		18	Q. (By Mr. Timmons) Okay. 02:20:11 PM
20		19	A. — at this point in time. 02:20:13 PM
21	THE WITNESS: Again, since — since I 02:16:04 PM didn't write it, I don't — I may not have said 02:16:05 PM	20	Q. All right. If you would read the 02:20:18 PM
22		21	first paragraph to yourself, I would like to ask 02:20:21 PM
23	it exactly that way, but in general, that 02:16:08 PM	22	you some questions about it. 02:20:21 PM
24	I I'm in agreement with the general gestalt 02:16:13 PM of that sentence. 02:16:15 PM	23	A. Okay. 02:20:46 PM
25	of that sentence. 02:16:15 PM	24	Q. Did you participate in discussions 02:20:47 PM

25 with Lucy Hicks and NeoRx regarding whether you

Q. (By Mr. Timmons) If you could read

02:20:49 PM

02:16:19 PM

	Page 121		Page 123
1	should remain as an inventor on recent patent 02:20:55 PM	1	approaches that I had — had developed in 02:23:49 PM
2	applications? 02:20:58 PM 2 collaboration with Dr. Kunz.		collaboration with Dr. Kunz. 02:23:53 PM
3	A. Let's see. Yes, I participated in 02:21:06 PM	3	Q. (By Mr. Timmons) Okay. The three 02:23:56 PM
4	discussions, Lucy Hicks and I had a 02:21:15 PM	4	applications that we have looked at today, Klein 02:23:58 PM
5	discussion. 02:21:21 PM	5	Exhibit 11, Klein Exhibit 9, and the PCT 02:24:01 PM
6	MR. NODINE: Don't just interrupt 02:21:23 PM	6	application, Klein Exhibit 10, were you aware of 02:24:05 PM
7	for a second. Lucy Hicks is counsel, 02:21:24 PM	7	any other applications prior to June 14th, 1993, 02:24:13 PM
8	attorney-dient privilege. Don't reveal the 02:21:26 PM	8	that had been filed on behalf of NeoRx on 02:24:17 PM
9	the discussions between you and Ms. Hicks that 02:21:30 PM	9	these this work that you had done with 02:24:20 PM
10	were only between the two of you. 02:21:34 PM	10	Dr. Kunz? 02:24:22 PM
11	If there were discussions involving a 02:21:37 PM	11	A. NeoRx would routinely send me 02:24:32 PM
12	third-party with NeoRx, then you may reveal 02:21:39 PM	12	applications for me to review. I don't - I 02:24:34 PM
13	those, but otherwise, maintain the privilege as 02:21:44 PM	13	didn't know the numbering scheme, and I don't 02:24:41 PM
14	to your confidential communications with 02:21:47 PM	14	know the the sequence of of when exactly 02:24:44 PM
15	Ms. Hicks. 02:21:49 PM	15	they were sent to me. But I do know of 02:24:47 PM
16	THE WITNESS: Okay. Lucy Hicks and I 02:21:52 PM	16	applications that were sent to me for review and 02:24:51 PM
17	had a conference call with the NeoRx patent 02:21:56 PM	17	proofreading and — and, you know, editing. So 02:24:54 PM
18	office at — at some point in time. I don't 02:22:03 PM	18	any that that weren't sent to me, I wasn't 02:25:00 PM
19	know if it was '93 or I don't know when it 02:22:06 PM	19	aware of those. 02:25:03 PM
20	was. I didn't I don't have a record of that 02:22:12 PM	20	Q. And based on what you had read in the 02:25:04 PM
21	call. 02:22:14 PM	21	proofreading of drafts, you came to the 02:25:07 PM
22	Q. (By Mr. Timmons) And was this the 02:22:16 PM	22	conclusion that you should have been a 02:25:09 PM
23	issue of whether or not you should be an 02:22:17 PM	23	co-inventor on those patent applications, 02:25:11 PM
24	inventor on pending patent applications at the 02:22:19 PM	24	correct? 02:25:14 PM
25	time, was that the at least part of the 02:22:22 PM	25	A. Correct. 02:25:14 PM
		1	
	Page 122		Page 124
1	Page 122 discussion? 02:22:24 PM	1	Q. Okay. If you could — I'm sorry, 02:25:15 PM
2	discussion? 02:22:24 PM A. That was the the impetus for the 02:22:25 PM	2.	Q. Okay. If you could — I'm sorry, 02:25:15 PM we're going to flip around a little bit. Go 02:25:19 PM
2	discussion? 02:22:24 PM A. That was the the impetus for the 02:22:25 PM call, yes. 02:22:29 PM	2. 3	Q. Okay. If you could — I'm sorry, 02:25:15 PM we're going to flip around a little bit. Go 02:25:19 PM back to the — the June 14th letter. 02:25:21 PM
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	discussion? A. That was the the impetus for the 02:22:25 PM call, yes. 02:22:29 PM Q. What was your position as to whether 02:22:32 PM or not you should be an inventor on those 02:22:34 PM pending patent applications? 02:22:37 PM MR. NODINE: Objection, lack of 02:22:39 PM foundation, vague and ambiguous. 02:22:39 PM THE WITNESS: I thought that I should 02:22:46 PM be included as a patent a co-patenter on at 02:22:47 PM least at least the ones that that I was 02:22:53 PM aware of and that had come to my attention, the 02:22:56 PM patents that that had come to my attention. 02:22:59 PM Q. (By Mr. Timmons) Why did you feel 02:23:02 PM you were a a co-inventor of those 02:23:07 PM MR. NODINE: Objection, vague. 02:23:09 PM THE WITNESS: Since I don't have 02:23:14 PM	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q. Okay. If you could — I'm sorry, 02:25:15 PM we're going to flip around a little bit. Go 02:25:19 PM back to the — the June 14th letter. 02:25:21 PM A. That one right there? 02:25:24 PM Q. Yes, Kunz Exhibit 15, the page — the 02:25:26 PM letter, please. And the second paragraph 02:25:30 PM states, in the second sentence, that "we are no 02:25:32 PM longer pursuing an immunoconjugate approach." 02:25:39 PM Were you aware that as of June 14th, 1993, that 02:25:39 PM NeoRx was no longer pursuing an immunoconjugate 02:25:44 PM NeoRx was no longer pursuing an immunoconjugate 02:25:48 PM approach? 02:25:57 PM A. No, I was not. 02:25:57 PM Q. The next sentence states that 02:25:57 PM "However, we have continued to build on the 02:25:59 PM initial concepts, and Pete has continued to be a 02:26:01 PM valuable collaborator in our studies." 02:26:04 PM What work did you do with NeoRx 02:26:07 PM that — that did not include the immunoconjugate 02:26:08 PM
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	discussion? A. That was the the impetus for the 02:22:25 PM call, yes. 02:22:29 PM Q. What was your position as to whether o12:22:32 PM or not you should be an inventor on those o12:22:34 PM pending patent applications? 02:22:37 PM MR. NODINE: Objection, lack of o12:22:39 PM foundation, vague and ambiguous. 02:22:39 PM THE WITNESS: I thought that I should o12:22:46 PM be included as a patent a co-patenter on at least the ones that that I was o12:22:53 PM aware of and that had come to my attention, the o12:22:56 PM patents that that had come to my attention. 02:22:59 PM Q. (By Mr. Timmons) Why did you feel o12:23:02 PM you were a a co-inventor of those o12:23:07 PM MR. NODINE: Objection, vague. 012:23:14 PM the the applications in front of me that 012:23:14 PM the the applications in front of me that 012:23:14 PM	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q. Okay. If you could — I'm sorry, 02:25:15 PM we're going to flip around a little bit. Go 02:25:19 PM back to the — the June 14th letter. 02:25:21 PM A. That one right there? 02:25:24 PM Q. Yes, Kunz Exhibit 15, the page — the 02:25:26 PM letter, please. And the second paragraph 02:25:30 PM states, in the second sentence, that "we are no 02:25:32 PM longer pursuing an immunoconjugate approach." 02:25:39 PM Were you aware that as of June 14th, 1993, that 02:25:44 PM NeoRx was no longer pursuing an immunoconjugate 02:25:48 PM approach? 02:25:56 PM A. No, I was not. 02:25:57 PM Q. The next sentence states that 02:25:57 PM "However, we have continued to build on the 02:25:59 PM initial concepts, and Pete has continued to be a 02:26:01 PM valuable collaborator in our studies." 02:26:04 PM What work did you do with NeoRx 02:26:07 PM that — that did not include the immunoconjugate 02:26:08 PM approach? 02:26:17 PM
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	discussion? A. That was the the impetus for the 02:22:25 PM call, yes. 02:22:29 PM Q. What was your position as to whether 02:22:32 PM or not you should be an inventor on those 02:22:34 PM pending patent applications? 02:22:37 PM MR. NODINE: Objection, lack of 02:22:39 PM foundation, vague and ambiguous. 02:22:39 PM THE WITNESS: I thought that I should 02:22:46 PM be included as a patent a co-patenter on at 02:22:47 PM least at least the ones that that I was 02:22:53 PM aware of and that had come to my attention, the 02:22:56 PM patents that that had come to my attention. 02:22:59 PM Q. (By Mr. Timmons) Why did you feel you were a a co-inventor of those 02:23:02 PM you were a a co-inventor of those 02:23:07 PM MR. NODINE: Objection, vague. 02:23:14 PM the the applications in front of me that 02:23:14 PM that prompted this, I can just go by memory, and 02:23:19 PM	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q. Okay. If you could — I'm sorry, 02:25:15 PM we're going to flip around a little bit. Go 02:25:19 PM back to the — the June 14th letter. 02:25:21 PM A. That one right there? 02:25:24 PM Q. Yes, Kunz Exhibit 15, the page — the 02:25:26 PM letter, please. And the second paragraph 02:25:30 PM states, in the second sentence, that "we are no 02:25:32 PM longer pursuing an immunoconjugate approach." 02:25:39 PM Were you aware that as of June 14th, 1993, that 02:25:44 PM NeoRx was no longer pursuing an immunoconjugate 02:25:48 PM approach? 02:25:56 PM A. No, I was not. 02:25:57 PM Q. The next sentence states that 02:25:57 PM "However, we have continued to build on the 02:25:59 PM initial concepts, and Pete has continued to be a 02:26:01 PM valuable collaborator in our studies." 02:26:04 PM What work did you do with NeoRx 02:26:07 PM that — that did not include the immunoconjugate 02:26:08 PM approach? 02:26:17 PM MR. NODINE: Objection, vague, 02:26:18 PM
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	discussion? A. That was the the impetus for the 02:22:25 PM call, yes. 02:22:29 PM Q. What was your position as to whether o12:22:32 PM or not you should be an inventor on those o12:22:34 PM pending patent applications? 02:22:37 PM MR. NODINE: Objection, lack of o12:22:39 PM foundation, vague and ambiguous. 02:22:39 PM THE WITNESS: I thought that I should o12:22:46 PM be included as a patent a co-patenter on at least the ones that that I was o12:22:53 PM aware of and that had come to my attention, the o12:22:56 PM patents that that had come to my attention. 02:22:59 PM Q. (By Mr. Timmons) Why did you feel o12:23:02 PM you were a a co-inventor of those o12:23:07 PM MR. NODINE: Objection, vague. 012:23:14 PM the the applications in front of me that 012:23:14 PM the the applications in front of me that 012:23:14 PM	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q. Okay. If you could — I'm sorry, 02:25:15 PM we're going to flip around a little bit. Go 02:25:19 PM back to the — the June 14th letter. 02:25:21 PM A. That one right there? 02:25:24 PM Q. Yes, Kunz Exhibit 15, the page — the 02:25:26 PM letter, please. And the second paragraph 02:25:30 PM states, in the second sentence, that "we are no 02:25:32 PM longer pursuing an immunoconjugate approach." 02:25:39 PM Were you aware that as of June 14th, 1993, that 02:25:44 PM NeoRx was no longer pursuing an immunoconjugate 02:25:48 PM approach? 02:25:56 PM A. No, I was not. 02:25:57 PM Q. The next sentence states that 02:25:57 PM "However, we have continued to build on the 02:25:59 PM initial concepts, and Pete has continued to be a 02:26:01 PM valuable collaborator in our studies." 02:26:04 PM What work did you do with NeoRx 02:26:07 PM that — that did not include the immunoconjugate 02:26:08 PM approach? 02:26:17 PM

02:26:29 PM

02:26:25 PM

02:26:23 PM

23 untrained eye, the approaches that were

25 identical to or — or very similar to the

24 described in these patent applications were

24

23 prior to this letter?

THE WITNESS: Can you repeat the

MR. TIMMONS: Any time.

02:23:37 PM

02:23:40 PM

02:23:43 PM

Page 128

	Page 125		
1	question? 02:26:29 PM	1	while and be a sus
2	Q. (By Mr. Timmons) Yeah. What work, 02:26:30 PM	2	treatment modality
3	other than the immunoconjugate approach, did you 02:26:33 PM	3	You know,
4	do with NeoRx? 02:26:37 PM	4	variety and then
5	MR. NODINE: Same objection. 02:26:40 PM	5	one of those arms
6	MR. MELORO: Overbroad, vague. 02:26:42 PM	6	immunoconjugates
7	THE WITNESS: At — from the very 02:26:45 PM	7	and - and to get to
8	beginning, all of the discussions that Dr. Kunz 02:26:49 PM	8	concentrate there.
. 9	and I had which pertaining to this area 02:27:04 PM	9	Q. Did you ev
10	related to all aspects of preventing restenosis. 02:27:09 PM	10	delivery technique
11	So from my perspective as — you 02:27:16 PM	11	MR. MELOR
12	know, in working on these projects, none of the 02:27:22 PM	12	THE WITNE
13	previous applications were solely or limited to 02:27:26 PM	13	for - for what, for
14	just immunoconjugate. The the use of the 02:27:30 PM	14	or
15	drugs and and the whole approach was what I 02:27:38 PM	15	Q. (By Mr. Tir
16	felt that that Dr. Kunz and I had had 02:27:46 PM	16	cytostatic agents.
17	developed. 02:27:51 PM	17	A. No, I neve
18	Q. (By Mr. Timmons) What was the 02:27:55 PM	18	either for NeoRx or
19	approach that you and Dr. Kunz had developed? 02:27:56 PM	19	our collaborations,
20	MR. MELORO: Objection to form. 02:28:01 PM	20	studies with any cy
21	THE WITNESS: The approach was the 02:28:06 PM	21	Q. If you wou
22	use of cytostatic agents in formulations or 02:28:08 PM	22	best way to describ
23	and using techniques that would direct those 02:28:21 PM	23	letter.
24	agents to the site of injury, as a to the 02:28:26 PM	24	A. Okay.
25	very broad or very limited description of our 02:28:39 PM	25	Q. There's a p

Page 126

	Page 127
1	while and be a sustained release type of — of 02:30:19 PM
2	treatment modality. 02:30:23 PM
3	You know, basically, a 02:30:29 PM
4	variety and then and again, and in addition, 02:30:30 PM
5	one of those arms or approaches included using 02:30:34 PM
6	immunoconjugates to direct them to the site 02:30:38 PM
7	and — and to get them to stay there and 02:30:42 PM
8	concentrate there. 02:30:45 PM
9	Q. Did you ever use stents as the 02:30:50 PM
10	delivery technique with Dr. Kunz at NeoRx? 02:30:54 PM
11	MR. MELORO: Objection to form. 02:31:00 PM
12	THE WITNESS: Delivery technique 02:31:04 PM
13	for — for what, for any compound in particular 02:31:04 PM
14	or 02:31:08 PM
15	Q. (By Mr. Timmons) With these 02:31:09 PM
16	cytostatic agents. 02:31:09 PM
17	A. No, I never performed or — either — 02:31:12 PM
18	either for NeoRx or, to my knowledge, as part of 02:31:18 PM
19	our collaborations, we never did do any stent 02:31:24 PM
20	studies with any cytostatic agents. 02:31:29 PM
21	Q. If you would turn to what's the 02:32:03 PM
22	best way to describe this page 2 of the 02:32:07 PM
23	letter. 02:32:09 PM
24	A. Okay. 02:32:09 PM
25	Q. There's a paragraph that starts, "The 02:32:10 PM

02:28:42 PM 1 of our scope. Q. (By Mr. Timmons) What techniques did 02:28:43 PM you use or - to direct the agents to the site 02:28:45 PM of injury? 02:28:51 PM 5 MR. MELORO: Objection, ambiguous. 02:28:55 PM 6 THE WITNESS: We - we proposed or we 02:29:01 PM 7 discussed a variety of techniques and 02:29:05 PM 8 methodologies to direct the compounds to the 02:29:07 PM 9 site where -- at high enough concentrations 02:29:14 PM where they would be -- we -- we thought they 02:29:18 PM 11 would be efficacious. 02:29:23 PM 12 Q. (By Mr. Timmons) What were the 02:29:25 PM 13 proposed techniques that you discussed with 02:29:25 PM 14 Dr. Kunz? 02:29:27 PM 15 A. We talked about the whole variety of 02:29:29 PM infusion catheter-type techniques. At the time, 02:29:32 PM 17 there were, and there still are, a wide, you 02:29:40 PM know, broad range of -- of different techniques 02:29:44 PM 19 for doing that. 02:29:46 PM 20 We discussed and proposed 02:29:49 PM 21 formulations of the compounds which -- which 02:29:52 PM would -- would -- which would paint or would 02:30:04 PM distribute the -- the drug to the site of injury 02:30:10 PM in a format that would -- you know, so that --02:30:14 PM so that it would be - would stick around for a 02:30:17 PM

	rage 120
1	agreement also calls for a 1 percent royalty." 02:32:11 PM
2	Would you read that paragraph to yourself, and I 02:32:15 PM
3	would like to ask you some questions about it, 02:32:17 PM
4	please. 02:32:19 PM
5	A. Okay. 02:32:43 PM
6	Q. Okay. Was the scope of the agreement 02:32:44 PM
7	modified, to your knowledge? 02:32:49 PM
8	A. Not to my knowledge. 02:32:54 PM
9	Q. Okay. 02:32:56 PM
10	A. Well, let me — let me ask, the 02:32:57 PM
11	agreement between NeoRx and UAB Research 02:33:02 PM
12	Foundation? 02:33:08 PM
13	Q. That's the agreement I 02:33:08 PM
14	A. Okay. 02:33:09 PM
15	Q I'm asking about, the 02:33:09 PM
16	A. Yeah. Okay. 02:33:10 PM
17	Q agreement that I've marked as 02:33:10 PM
18	Anderson Exhibit 8. Do you know if that 02:33:11 PM
19	agreement was modified at all? 02:33:13 PM
20	A. I didn't have any knowledge of that. 02:33:19 PM
21	I wasn't involved in any of those discussions. 02:33:21 PM
22	Q. Okay. Let me just ask you, then, 02:33:23 PM
23	if — this is something that's been — well, 02:33:38 PM
24	it's UAB, too. Let me let me show you 02:33:55 PM
25	Exhibit 16 from the Kunz deposition, September 02:33:57 PM

Page 131

Page 132

		Page 129		
	1	i, 1993, agreement between NeoRx and the UAB 02:34:03 PM	1	the fourth page of
	2	Research Foundation, and ask you if you've seen 02:34:09 PM	2	A. Yes.
	3	that document before. That's Kunz Exhibit 16, 02:34:11 PM	3	O. And this -
	4	NeoRx 100026 through 37. 02:34:14 PM	4	second paragraph,
	5	A. And what was the question? 02:35:19 PM	5	understand the cor
	6	Q. Whether or not you've ever seen that 02:35:21 PM	6	A. Oh, yes.
	7	document before. 02:35:21 PM	7	Q. It states t
	8	A. I don't recall ever seeing this 02:35:23 PM	8	understand the cor
	9	document before. 02:35:24 PM	9	daims forming part
	10	Q. Okay. Why don't you put that aside, 02:35:25 PM	10	letters patent entit
	11	then. 02:35:28 PM	11	vascular smooth m
	12	MR. MELORO: We've been going about 02:35:33 PM	12	May 19th, 1993, ar
	13	an hour. When you reach a convenient point - 02:35:33 PM	13	application serial n
	14	MR. TIMMONS: I would like to go a 02:35:37 PM	14	see that?
	15	little bit longer this time, though. We started 02:35:37 PM	15	A. Yes.
	16	a little bit late. If we could go another ten 02:35:39 PM	16	Q. And did yo
	17	minutes, I would appreciate it, if that's 02:35:39 PM	17	application, 062,45
	18	okay with 02:35:39 PM	18	declaration?
	19	MR. MELORO: I'd ask Mr. Nodine and 02:35:43 PM	19	A. At this I
	20	the witness. 02:35:45 PM	20	Q. Would you
	21	MR. NODINE: Ten minutes is fine with 02:35:46 PM	21	not reviewed and u
	22	me. Do you feel like you need a break, or 02:35:47 PM	22	application?
	23	are 02:35:49 PM	23	A. I can't spe
	24	THE WITNESS: No, I'm 02:35:49 PM	24	know, what I would
	25	MR. NODINE: you all right? 02:35:49 PM	25	was after the I
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1	the fourth page of the document? 02:37:52 PM
2	A. Yes. 02:37:55 PM
3	Q. And this - I guess it would be the 02:38:03 PM
4	second paragraph, starting "we have reviewed and 02:38:09 PM
5	understand the contents of," do you see that? 02:38:11 PM
6	A. Oh, yes. 02:38:15 PM
7	Q. It states that, "We have reviewed and 02:38:16 PM
8	understand the contents of the specification and 02:38:19 PM
9	daims forming part of an application for U.S. 02:38:21 PM
10	letters patent entitled therapeutic inhibitor of 02:38:24 PM
11	vascular smooth muscle cells, which was filed on 02:38:28 PM
12	May 19th, 1993, and assigned U.S. patent 02:38:31 PM
13	application serial number 08/062,451." Do you 02:38:34 PM
14	see that? 02:38:39 PM
15	A. Yes. 02:38:40 PM
16	Q. And did you review this patent 02:38:40 PM
17	application, 062,451, prior to your signing this 02:38:43 PM
18	declaration? 02:38:50 PM
19	A. At this I don't recall. 02:38:56 PM
20	Q. Would you have signed it if you had 02:39:00 PM
21	not reviewed and understood the contents of that 02:39:01 PM
22	application? 02:39:04 PM
23	A. I can't speculate at this point, you 02:39:08 PM
24	know, what I would have done back then. I 02:39:10 PM
25	was after the the agreement between UAB 02:39:16 PM

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	Page 130
1	MR. TIMMONS: I — I would appreciate 02:35:49 PM
2	it. Sometimes the breaks have been sort of 02:35:50 PM
3	extended today. And if you would give me that 02:35:51 PM
4	courtesy, I would appreciate it. Thank you. 02:35:53 PM
5	Let me mark as Anderson — Anderson 02:36:04 PM
6	Exhibit 9 a cover letter and an assignment, June 02:36:11 PM
7	23, 1993, to Peter Anderson from Sue Lintott, 02:36:17 PM
8	UAB 985 through 989. 02:36:25 PM
9	(WHEREUPON, Anderson Exhibit 9 was marked for 02:36:43 PM
10	identification.) 02:36:30 PM
11	Q. (By Mr. Timmons) My question is, 02:36:43 PM
12	Dr. Anderson, have you seen this document 02:36:43 PM
13	before? 02:36:45 PM
14	A. Yes. 02:37:05 PM
15	Q. And what is it? 02:37:05 PM
16	A. The declaration of power of attorney? 02:37:12 PM
17	Q. Yes. 02:37:18 PM
18	A. It's it's a declaration of the 02:37:29 PM
19	power of attorney. 02:37:31 PM
20	Q. For one of the applications that was 02:37:32 PM
21	filed on your behalf at — at — by NeoRx? 02:37:33 PM
22	A. It looks that way, although, again, 02:37:42 PM
23	the — the numbering system doesn't mean 02:37:44 PM
24	anything to me. 02:37:47 PM
25	Q. Okay. And that's your signature on 02:37:48 PM
	· =

	1090 101
. 1	Research Foundation and NeoRx, I was told by our 02:39:23 PM
2	research foundation that we are working with 02:39:28 PM
3	NeoRx now, so they're — they're on our side. 02:39:33 PM
4	We're — we're trying to move these things 02:39:36 PM
5	forward. 02:39:39 PM
6	So I can't say that they said this 02:39:42 PM
7	word for word, but the implication was that when 02:39:46 PM
8	they send you stuff to sign related to these 02:39:50 PM
9	patents, go ahead and sign them, it's okay for 02:39:53 PM
10	you to sign them because we're partners now. 02:39:58 PM
11	Q. Okay. Is there any reason to believe 02:40:00 PM
12	that you didn't review and understand that 02:40:02 PM
13	application when you signed this? 02:40:03 PM
14	A. No, I — I assume I did. I — I 02:40:05 PM
15	assumed I would have read it or at least looked 02:40:07 PM
16	over it or been aware of it before I signed it. 02:40:09 PM
17	Q. Okay. 02:40:19 PM
18	MR. TIMMONS: Let me mark as Anderson 02:40:30 PM
19	Exhibit 10 a cover letter dated November 1st, 02:40:34 PM
20	1994, from Sue Lintott, again, to Dr. Anderson, 02:40:37 PM
21	UAB 1081 through 1084. 02:40:43 PM
22	(WHEREUPON, Anderson Exhibit 10 was marked for 02:41:01 PM
23	identification.) 02:41:01 PM
24	Q. (By Mr. Timmons) Do you recognize 02:41:05 PM
25	the assignment that's attached to this cover 02:41:05 PM

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		Page 133		Page 135
	1	letter? 02:41:08 PM	1	NeoRx sent me NeoRx legal office sent me 02:43:22 PM
	2	A. By assignment, you mean the — the 02:41:10 PM	2	something to sign, said we need you to sign this 02:43:29 PM
	3	specific patent it's referring to? 02:41:20 PM	3	in relation to, you know, our patents, meaning 02:43:32 PM
	4	Q. Where it says "assignment," the 02:41:22 PM	4	the UAB/NeoRx patents, I signed it and sent it 02:43:35 PM
	5	document pages UAB 1082 through 1084. 02:41:24 PM	5	back. 02:43:41 PM
	6	A. Yes. 02:41:36 PM	6	Q. (By Mr. Timmons) Could you pull out 02:43:45 PM
	7	Q. Is this an assignment of your rights 02:41:37 PM	7	Kunz 11, the assignment from yourself to UAB, 02:43:46 PM
	8	in this patent application, the 08/062,451, to 02:41:39 PM	8	and keep — keep this new assignment out with 02:43:49 PM
	9	NeoRx Corporation? 02:41:47 PM	9	you also. 02:43:56 PM
	10	MR. NODINE: Objection, insofar as it 02:41:50 PM	10	Now, Kunz 11 is an assignment 02:44:07 PM
	11	calls for a legal conclusion. 02:41:52 PM	11	yeah, exactly 02:44:09 PM
	12	THE WITNESS: I — I don't know. 02:42:02 PM	12	A. Okay. 02:44:10 PM
	13	Q. (By Mr. Timmons) Okay. 02:42:03 PM	13	Q from yourself to UAB of the first 02:44:10 PM
	14	A. I'd have to say I don't know. 02:42:04 PM	14	application, correct? 02:44:12 PM
	15	Q. Well, let's let's just establish, 02:42:06 PM	15	A. Oh, what which what are you 02:44:18 PM
	16	that's your signature on the last page? 02:42:07 PM	16	referring to as the first application? 02:44:19 PM
	17	A. Yes. 02:42:08 PM	17	Q. The application that was filed on 02:44:21 PM
	18	Q. Okay. 02:42:09 PM	18	September 27th, 1991, that named you and 02:44:22 PM
	19	A. So, yes, I signed this. 02:42:10 PM	19	Dr. Kunz as a co-inventor. Do you remember that 02:44:25 PM
	20	Q. Okay. And let's walk through it a 02:42:12 PM	20	one? It's — it's Klein Exhibit 9. Yeah, 02:44:30 PM
	21	little bit, then. 02:42:13 PM	21	exactly, that one right there. 02:44:40 PM
	22	Do you see where it says, "Whereas, 02:42:15 PM	22	A. Okay. 02:44:41 PM
	23	we," and then it lists a number of names in the 02:42:16 PM	23	Q. Do you recognize Kunz Exhibit 11 as 02:44:42 PM
	24	beginning, and you're listed as the last name? 02:42:18 PM	24	an assignment of that application from yourself 02:44:44 PM
	25	A. Yes. 02:42:21 PM	25	to — to the UAB foundation? 02:44:45 PM
		•		
		Page 134		Page 136
	1	Q. Okay. Then it says, "hereinafter 02:42:21 PM	1	A. As we discussed before, I remember 02:45:00 PM
	2	Q. Okay. Then it says, "hereinafter 02:42:21 PM referred to as the assignors." Do you see 02:42:23 PM	2	A. As we discussed before, I remember 02:45:00 PM signing this, this assignment. 02:45:02 PM
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	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q. Okay. Then it says, "hereinafter referred to as the assignors." Do you see 02:42:23 PM that? 02:42:29 PM A. Yes. 02:42:29 PM Q. So you're one of the assignors. 02:42:29 PM Okay. And, then the next paragraph starts out, 02:42:31 PM "Whereas, NeoRx Corporation is referred to as 02:42:33 PM the assignee"? 02:42:35 PM A. (Nods head affirmatively.) 02:42:38 PM Q. Do you see that? 02:42:38 PM A. Yes. 02:42:40 PM Q. Okay. And now, the last paragraph 02:42:40 PM states that, "Now, therefore, assignors hereby 02:42:42 PM sell, assign, and transfer unto said assignee 02:42:45 PM the full and exclusive right, title, and 02:42:48 PM interest in and to said invention for the United 02:42:50 PM States of America," and it goes on for another 02:42:53 PM paragraph about that. 02:42:56 PM Do you understand that you, as an 02:42:57 PM assignor, was assigning your rights in the 451 02:42:58 PM application to NeoRx? 02:43:04 PM MR. NODINE: Same objection. 02:43:09 PM THE WITNESS: I can't, at this point 02:43:11 PM	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. As we discussed before, I remember 02:45:00 PM signing this, this assignment. 02:45:02 PM Q. Okay. Kunz Exhibit 11? 02:45:08 PM A. Yes. 02:45:08 PM Q. Okay. And do you recognize it as an 02:45:09 PM assignment from yourself of your rights from 02:45:10 PM yourself to UAB Research Foundation? 02:45:13 PM A. Yes. 02:45:16 PM Q. Okay. Did you no longer have an 02:45:18 PM obligation to assign your rights to the UAB 02:45:20 PM Research Foundation as of November 1st, 1994, 02:45:24 PM when you assigned your rights to NeoRx in the 02:45:27 PM subsequent application? 02:45:30 PM MR. NODINE: Objection, calls for a 02:45:32 PM legal conclusion. 02:45:33 PM THE WITNESS: I had let's see. 02:45:42 PM (Whereupon, the record was read by the court 02:45:18 PM reporter as follows: 02:45:49 PM "QUESTION: Did you no longer have an 02:45:18 PM obligation to assign your rights to the UAB 02:45:20 PM
	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Q. Okay. Then it says, "hereinafter referred to as the assignors." Do you see 02:42:23 PM that? 02:42:29 PM A. Yes. 02:42:29 PM Q. So you're one of the assignors. 02:42:29 PM Okay. And, then the next paragraph starts out, 02:42:31 PM "Whereas, NeoRx Corporation is referred to as 02:42:33 PM the assignee"? 02:42:35 PM A. (Nods head affirmatively.) 02:42:38 PM Q. Do you see that? 02:42:38 PM A. Yes. 02:42:40 PM Q. Okay. And now, the last paragraph 02:42:40 PM states that, "Now, therefore, assignors hereby 02:42:42 PM sell, assign, and transfer unto said assignee 02:42:45 PM the full and exclusive right, title, and 02:42:48 PM interest in and to said invention for the United 02:42:50 PM States of America," and it goes on for another 02:42:53 PM paragraph about that. 02:42:56 PM Do you understand that you, as an 02:42:57 PM assignor, was assigning your rights in the 451 02:42:58 PM application to NeoRx? 02:43:04 PM MR. NODINE: Same objection. 02:43:10 PM in time, recount exactly what I thought when I 02:43:16 PM	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 1	A. As we discussed before, I remember 02:45:00 PM signing this, this assignment. 02:45:02 PM Q. Okay. Kunz Exhibit 11? 02:45:08 PM Q. Okay. And do you recognize it as an 02:45:09 PM assignment from yourself — of your rights from 02:45:10 PM yourself to UAB Research Foundation? 02:45:13 PM A. Yes. 02:45:16 PM Q. Okay. Did you no longer have an 02:45:18 PM obligation to assign your rights to the UAB 02:45:20 PM Research Foundation as of November 1st, 1994, 02:45:24 PM when you assigned your rights to NeoRx in the 02:45:27 PM subsequent application? 02:45:30 PM MR. NODINE: Objection, calls for a 02:45:32 PM legal conclusion. 02:45:33 PM THE WITNESS: I had — let's see. 02:45:42 PM (Whereupon, the record was read by the court 02:45:18 PM reporter as follows: 02:45:49 PM "QUESTION: Did you no longer have an 02:45:18 PM obligation to assign your rights to the UAB 02:45:20 PM Research Foundation as of November 1st, 1994, 02:45:24 PM 02:45:20 PM Research Foundation as of November 1st, 1994, 02:45:24 PM 02:45:20 PM Research Foundation as of November 1st, 1994, 02:45:24 PM
	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q. Okay. Then it says, "hereinafter referred to as the assignors." Do you see 02:42:23 PM that? 02:42:29 PM A. Yes. 02:42:29 PM Q. So you're one of the assignors. 02:42:29 PM Okay. And, then the next paragraph starts out, 02:42:31 PM "Whereas, NeoRx Corporation is referred to as 02:42:33 PM the assignee"? 02:42:35 PM A. (Nods head affirmatively.) 02:42:38 PM Q. Do you see that? 02:42:38 PM A. Yes. 02:42:40 PM Q. Okay. And now, the last paragraph 02:42:40 PM states that, "Now, therefore, assignors hereby 02:42:42 PM sell, assign, and transfer unto said assignee 02:42:45 PM the full and exclusive right, title, and 02:42:48 PM interest in and to said invention for the United 02:42:50 PM States of America," and it goes on for another 02:42:53 PM paragraph about that. 02:42:56 PM Do you understand that you, as an 02:42:57 PM assignor, was assigning your rights in the 451 02:42:58 PM application to NeoRx? 02:43:04 PM MR. NODINE: Same objection. 02:43:09 PM THE WITNESS: I can't, at this point 02:43:11 PM	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 1	A. As we discussed before, I remember 02:45:00 PM signing this, this assignment. 02:45:02 PM Q. Okay. Kunz Exhibit 11? 02:45:06 PM A. Yes. 02:45:08 PM Q. Okay. And do you recognize it as an 02:45:09 PM assignment from yourself — of your rights from 02:45:10 PM yourself to UAB Research Foundation? 02:45:13 PM A. Yes. 02:45:16 PM Q. Okay. Did you no longer have an 02:45:18 PM obligation to assign your rights to the UAB 02:45:20 PM Research Foundation as of November 1st, 1994, 02:45:24 PM when you assigned your rights to NeoRx in the 02:45:27 PM subsequent application? 02:45:30 PM MR. NODINE: Objection, calls for a 02:45:32 PM legal conclusion. 02:45:33 PM THE WITNESS: I had — let's see. 02:45:42 PM Repeat the question. 02:45:46 PM (Whereupon, the record was read by the court 02:45:18 PM reporter as follows: 02:45:49 PM "QUESTION: Did you no longer have an 02:45:20 PM Research Foundation as of November 1st, 1994, 02:45:24 PM obligation to assign your rights to the UAB 02:45:20 PM Research Foundation as of November 1st, 1994, 02:45:24 PM when you assigned your rights to NeoRx in the 02:45:27 PM

	Page 137
1	under the same obligations as I was previously. 02:46:10 PM
2	Q. (By Mr. Timmons) Okay. Then why did 02:46:17 PM
3	you assign your rights in the application, the 02:46:18 PM
4	451 application, to NeoRx and not to the UAB 02:46:26 PM
5	Research Foundation in November 1994? 02:46:32 PM
6	MR. NODINE: Objection, insofar as it 02:46:35 PM
7	calls for a legal conclusion. 02:46:36 PM
8	THE WITNESS: As I stated previously, 02:46:40 PM
9	since UAB Research Foundation and NeoRx had an 02:46:41 PM
10	agreement and I had been instructed or or 02:46:51 PM
11	had I I interpreted the instruction from 02:46:54 PM
12	the UAB Research Foundation was to cooperate and 02:46:57 PM
13	sign materials that were sent to me by NeoRx. 02:47:02 PM
14	Q. (By Mr. Timmons) Did you understand 02:47:10 PM
15	that NeoRx had a license, under the work you 02:47:12 PM
16	were doing with Dr. Kunz and NeoRx, from UAB at 02:47:15 PM
17	the time? 02:47:20 PM
18	A. I understood that there was an 02:47:22 PM
19	agreement. The way it was described to me was 02:47:24 PM
20	that UAB Research Foundation and NeoRx have 02:47:27 PM
21	signed an agreement. So I basically was told to 02:47:33 PM
22	go into the laboratory and try and develop this 02:47:39 PM
23	idea that you and Dr. Kunz have have come up 02:47:43 PM
24	with. 02:47:47 PM
25	So I nobody ever discussed with me 02:47:48 PM

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Page 139
 1 question is — it's addressed to you at home.
                                                  03:03:38 PM
    Is that where NeoRx sent you correspondence on
                                                      03:03:41 PM
    the usual basis with regard to these patent
                                                  03:03:45 PM
    applications?
                                          03:03:47 PM
         A. I don't recall. I know I got them at 03:03:51 PM
    work. I - I don't recall if - if I got these 03:03:55 PM
6
                                         03:04:02 PM
7
    at home.
         Q. When you received documents from
8
                                                    03:04:04 PM
9
    NeoRx that you signed and sent back to them, did 03:04:06 PM
    you take every single one into the legal
                                                03:04:09 PM
    department or the patent management department
                                                       03:04:14 PM
    at the UAB Research Foundation to say, hey, I - 03:04:17 PM
    you know, I want to get your approval, or did 3:04:20 PM
    you just sign them and send them back?
                                                   03:04:22 PM
         A. I usually just signed them and sent 03:04:27 PM
15
                                          03:04:30 PM
16
   them back.
17
         Q. Do you remember what happened with
                                                     03:04:31 PM
   this particular assignment, whether or not you
                                                   03:04:33 PM
18
    ran this past the UAB Research Foundation
                                                   03:04:36 PM
    management department before you signed it?
                                                      03:04:38 PM
20
21
         A. I don't recall specifically whether I 03:04:41 PM
22
   did or not.
                                         03:04:42 PM
23
         Q. Okay. Keep - keep that out, I'm
                                                03:04:45 PM
    going to need you to compare that to another
                                                    03:05:03 PM
   document, so...
                                           03:05:05 PM
```

Page 138 any of the, you know, legal ramifications of 02:47:50 PM what I should or shouldn't do, other than to say 02:47:57 PM 2 cooperate with them because we're partners now. 02:48:00 PM 3 Q. Okay. And you signed this assignment 02:48:04 PM on November 7th, 1994, pursuant to those 02:48:09 PM discussions? 02:48:13 PM 6 A. Correct. When -- you know, when I 02:48:15 PM 7 signed this, I thought -- or I -- you know, I 02:48:17 PM 8 9 must have thought at the time, I can't say 02:48:21 PM exactly what I thought at the time 15 years 02:48:24 PM 10 later, but -- or ten years later, but I was 02:48:26 PM 11 under the impression at that point that since 02:48:29 PM we're partners, just sign what they send you 13 02:48:34 PM 14 because then that will help our research project 02:48:36 PM 15 move forward. 02:48:39 PM 02:48:40 PM 16 Q. Okay. 17 MR. TIMMONS: This as good a time as 02:48:42 PM 18 any for a break. 02:48:43 PM THE VIDEOGRAPHER: We are going off 19 02:48:45 PM 20 the record, 2:48 p.m. 02:48:45 PM (Whereupon, there was a brief recess.) 21 03:03:30 PM 22 THE VIDEOGRAPHER: We are back on the 03:03:30 PM 23 record, 3:03 p.m. 03:03:31 PM 24 Q. (By Mr. Timmons) Dr. Anderson, I've 03:03:35 PM asked you to look at Anderson Exhibit 10, and my 03:03:35 PM

1	Let me mark, as Anderson Exhibit 11, 03:05:06 PM
2	another assignment from Drs. Kunz, Klein, Reno, 03:05:09 PM
3	Grainger, Metcalf, Weissberg, and Anderson, it 03:05:17 PM
4	bears production numbers NeoRx 31432 through 03:05:20 PM
5	31434. 03:05:24 PM
6	(WHEREUPON, Anderson Exhibit 11 was marked for 03:05:29 PM
7	identification.) 03:05:28 PM
8	Q. (By Mr. Timmons) Okay. Now, is that 03:05:45 PM
9	your signature on the middle of page NeoRx 03:05:48 PM
10	31434? 03:05:53 PM
11	A. Yes. 03:05:56 PM
12	Q. Okay. And that's dated November 7th, 03:05:56 PM
13	1994, correct? 03:06:00 PM
14	A. Yes. 03:06:03 PM
15	Q. Okay. And if you turn back to - I'm 03:06:18 PM
16	sorry Anderson 10, that's also dated November 03:06:22 PM
17	7th, 1994, right? 03:06:26 PM
18	A. Yes. 03:06:29 PM
19	Q. Do you see any differences — 03:06:37 PM
20	MR. NODINE: Just I'd like - 03:06:39 PM
21	MR, TIMMONS: Sorry. 03:06:40 PM
22	MR. NODINE: — clarification on 03:06:42 PM
23	the – what was – the last question with 03:06:42 PM
24	respect to Anderson 10 was what? 03:06:43 PM

MR. TIMMONS: Whether or not your

03:06:46 PM

Page 140

25

Page 144

	Page 141		Page 143
1	signature is dated November 7th, 1994 also. 03:06:47 PM	1	those signatures? 03:09:40 PM
2	MR. NODINE: Whether the signature is 03:06:51 PM	2	A. I'm not a handwriting expert, but to 03:09:42 PM
3	dated? 03:06:51 PM	3	my untrained eye, they look fairly similar. 03:09:49 PM
4	MR. TIMMONS: Yeah. 03:06:52 PM	4	Q. Okay. Did anyone from NeoRx ever 03:09:58 PM
5	MR. NODINE: All right. Thank you. 03:06:53 PM	_ 5	call you or contact you and ask your permission 03:10:00 PM
6	Q. (By Mr. Timmons) And — and my 03:06:54 PM	6	to change the first page of this assignment 03:10:03 PM
7	question is, Dr. Anderson, do you see any 03:06:54 PM	7	after you had signed it? 03:10:07 PM
8	differences in the signatures between the two 03:06:57 PM	8	A. No. 03:10:10 PM
9	documents? 03:06:58 PM	9	Q. Do you know whether or not that's 03:10:15 PM
10	A. No, sir. 03:07:00 PM	10	what happened in the differences between 03:10:16 PM
11	Q. Okay. Did you sign two assignments 03:07:00 PM	11	Anderson Exhibit 10 and Anderson Exhibit 11? 03:10:20 PM
12	on — on November 7th, 1994, to your memory? 03:07:16 PM	12	A. I have no knowledge of that. 03:10:25 PM
13	A. I don't remember, you know, that day 03:07:21 PM	13	Q. Would you have agreed to such a 03:10:31 PM
14	particularly whether I did or not. 03:07:28 PM	14	change without your knowledge, if they had asked 03:10:32 PM
15	Q. If you would take Anderson Exhibit 03:07:30 PM	15	you? 03:10:36 PM
16	10, which is the one with the cover letter on it 03:07:33 PM	16	MR. NODINE: Objection, lack of 03:10:37 PM
17	from Sue Lintott, and the first paragraph under 03:07:36 PM	17	foundation, calls for speculation. 03:10:38 PM
18	the assignment ends with the following two 03:07:41 PM	18	THE WITNESS: At — at the time, I 03:10:44 PM
19	lines or three lines, "which application in 03:07:44 PM	19	don't know I didn't really know what the 03:10:54 PM
20	part discloses and claims subject matter 03:07:48 PM	20	implications or what it would have meant by the 03:10:57 PM
21	disclosed in U.S. serial number 07/767,254 filed 03:07:51 PM	21	statement that they that they were abandoning 03:11:00 PM
22	September 27, 1991 and now abandoned." Do you 03:07:58 PM	22	this application. 03:11:03 PM
23	see that? 03:08:02 PM	23	Q. (By Mr. Timmons) Okay. My question 03:11:05 PM
24	A. Yes. 03:08:03 PM	24	was more would you have been well, strike 03:11:07 PM
25	Q. If you would take — look at the same 03:08:04 PM	25	that. 03:11:10 PM

Page 142 paragraph for Anderson Exhibit 11, that doesn't 03:08:06 PM 2 have that reference to the September 7th -03:08:11 PM 3 September 27th, 1991 application, correct? 03:08:14 PM 4 A. Correct. 03:08:20 PM 5 Q. Okay. Do you remember signing — 03:08:21 PM 6 assigning two applications -- I'm sorry, strike 03:08:27 PM 7 03:08:29 PM 8 Do you remember signing two 03:08:30 PM 9 assignments on November 7th, 1994, one with and 03:08:31 PM one without this reference to the application 03:08:35 PM 10 filed on September 27th, 1991? 11 03:08:38 PM A. No. 12 03:08:41 PM 13 Q. Did NeoRx ever discuss with you that 03:08:42 PM 14 there was a change in this assignment to remove 03:08:44 PM 15 that reference to that application? 03:08:51 PM MR. MELORO: Objection, lack of 16 03:08:53 PM 17 foundation. 03:08:54 PM 18 THE WITNESS: To the best of my 03:08:56 PM 19 recollection, no, I had no discussions with 03:08:56 PM 20 NeoRx about that. 03:09:01 PM 21 Q. (By Mr. Timmons) Okay. If you could 03:09:02 PM 22 look at the -- on the two documents, the 03:09:24 PM 23 signatures on page 2 of the documents, the 03:09:28 PM 03:09:32 PM signatures with Kunz, Klein, Reno, and Grainger on both of them, do you see any differences in 03:09:36 PM

1 Do you see, on the third page of 03:11:12 PM Anderson Exhibit 11, it says up in the upper 03:11:14 PM right hand corner, "recorded patent and 03:11:18 PM trademark office, March 9th, 1995," do you see 03:11:20 PM that? 5 03:11:24 PM 6 A. Yes. 03:11:25 PM 7 Let's – oh, we've already marked it. 03:12:01 PM Kunz Exhibit 17 is a December 3rd letter from 03:12:03 PM 9 Anna Lewak Wight to yourself. It bears 03:12:08 PM 10 production numbers UAB 00083 through 99. 03:12:15 PM 11 And flip through and read whatever 03:12:32 PM you'd like to read, but my question is, Doctor, 03:12:33 PM 13 have you ever seen this document before? 03:12:36 PM A. Yes, this is a copy of the - of a 14 03:13:14 PM 15 memo that was in my -- my file. 03:13:16 PM 16 Q. Okay. Do you know what the petitions 03:13:20 PM are that Ms. Wight is talking about in the first 03:13:35 PM 17 18 paragraph? 03:13:40 PM 19 A. No, I don't. 03:13:54 PM 20 Q. Did you ever sign any petitions to 03:13:55 PM 21 change inventorship for any of the applications 03:13:59 PM 22 that you were -- that were filed for NeoRx? 03:14:02 PM 23 A. And at what time --03:14:13 PM Q. I guess the -- the more specific 24 03:14:15 PM question would be about December 1996. 03:14:17 PM

	Page 153		Page 155
1	A. Yes. 03:27:22 PM	1	cytochalasin B, there was a sustained dilation 03:30:03 PM
2	Q. Okay. Would that be called a bolus 03:27:22 PM	2	following balloon traumatization, even without 03:30:09 PM
3	administration of cytochalasin B? 03:27:23 PM	3	inhibition of vascular smooth muscle cell 03:30:13 PM
4	A. I don't think there's - there's any 03:27:33 PM	4	proliferation, correct? 03:30:16 PM
5	real standardized definition of the word bolus. 03:27:35 PM	5	A. Yes. 03:30:18 PM
6	In — in normal medical parlance, bolus would be 03:27:41 PM	6	Q. What role did you personally play in 03:30:20 PM
7	an an intravenous or or a or an 03:27:47 PM	7	the work that's reported in this abstract of 03:30:22 PM
8	intra-arterial injection all at once. 03:27:51 PM	8	Anderson Exhibit 12? 03:30:26 PM
9	Q. Okay. 03:27:57 PM	9	A. The the animal experiments were 03:30:32 PM
10	A. This was not a this was not an 03:27:57 PM	10	performed in Seattle, so I did not participate 03:30:35 PM
11	intravenous or intravascular injection that went 03:27:59 PM	11	in the actual hands-on animal experiments. My 03:30:39 PM
12	into the whole animal. 03:28:04 PM	12	role was more as, you know, collaborator, we 03:30:43 PM
13	Q. Okay. But in this case, there was a 03:28:06 PM	13	discussed the idea over the telephone, and 03:30:52 PM
14	single administration of cytochalasin B, 03:28:08 PM	14	together we came up with with the idea to 03:30:54 PM
15	correct? 03:28:12 PM	15	to try this experiment. 03:30:58 PM
16	A. Correct. 03:28:13 PM	16	Q. Okay. I think you could put that one 03:31:04 PM
17	Q. Okay. And that lasted for 1.5 to 3 03:28:13 PM	17	aside for right now and go back to Kunz 17, 03:31:06 PM
18	minutes, right? 03:28:16 PM	18	the the letter with the with the claims on 03:31:10 PM
19	A. Yes. 03:28:17 PM	19	it, please. 03:31:15 PM
20	Q. Okay. And at the bottom couple of 03:28:17 PM	20	A. Okay. 03:31:16 PM
21	lines, it states that "proliferation of vascular 03:28:28 PM	21	Q. And when you received this letter on 03:31:26 PM
22	smooth muscle cells at the site of 03:28:31 PM	22	December on or about December 3rd, 1996, did 03:31:33 PM
23	traumatization was not inhibited by treatment 03:28:32 PM	23	you review the claims that are set forth for the 03:31:36 PM
24	with CB," which is cytochalasin B, right? 03:28:35 PM	24	712 application that go from UAB 90 through 97 03:31:39 PM
25	A. Correct. 03:28:39 PM	· 25	or so? 03:31:47 PM

23	traumatization was not inhibited by treatment 03:28:32 PM	23	you review the daims that are set forth for the 03:31:36 PM
24	with CB," which is cytochalasin B, right? 03:28:35 PM	24	
25	A. Correct. 03:28:39 PM	. 25	
	Page 154		Page 156
1	Q. Okay. If the cytochalasin B is 03:28:40 PM	1	
2	applied to the site of trauma for a sustained 03:28:43 PM	2	specifically going and reading each claim. 03:31:54 PM
3	amount of time, could the cytochalasin B inhibit 03:28:50 PM	3	Q. Did you feel that you were an 03:32:03 PM
4	the proliferation? 03:28:56 PM	4	
5	MR. NODINE: Objection to form, calls 03:28:58 PM	5	
6	for speculation, lack of foundation. 03:29:00 PM	6	MR. MELORO: Objection to form. 03:32:14 PM
7	THE WITNESS: How long are you 03:29:02 PM	7	
8	thinking? 03:29:03 PM	8	
9	Q. (By Mr. Timmons) Three days or more. 03:29:04 PM	9	
10	A. In this experiment, we only did the 03:29:07 PM	10	
11	short application, and there was no attempt 03:29:10 PM	11	
12	to to do a sustained release type of 03:29:12 PM	12	
13	experiment. So so I would have to say we 03:29:16 PM	13	
14	don't have — we didn't do the experiments to be 03:29:20 PM	14	
. 15	able to to answer I don't have the data to 03:29:22 PM	15	
16	answer your question. 03:29:24 PM	16	
17	Q. Okay. And is this abstract related 03:29:25 PM	17	
18	to the biological stenting effect that we saw in 03:29:29 PM	18	·
19	the summary of the field of invention of the 712 03:29:33 PM	19	· · · · · · · · · · · · · · · · · · ·
20	application? 03:29:38 PM	20	55.52.76 FM
21	MR. NODINE: Objection to form, vague 03:29:40 PM	21	Q. (By Mr. Timmons) Okay. Okay. Let — 03:32:55 PM
22	and ambiguous. 03:29:41 PM	22	•
23	THE WITNESS: Yes, I believe so. 03:29:48 PM	23	-
24	Q. (By Mr. Timmons) Okay. And in this 03:29:49 PM	24	
25	case, with that single administration of 03:30:00 PM	25	· · · · · · · · · · · · · · · · · · ·
	03.30.00 PM	23	could just pass the extra on to your counsel, 03:33:52 PM

03:33:52 PM

25 could just pass the extra on to your counsel,

	Page 157		Page 159
1	please. 03:33:55 PM	1	patent number 6,515,009? 03:36:05 PM
2	Okay. Have you seen this patent 03:34:03 PM	2	A. No, I do not. 03:36:10 PM
3	before? 03:34:05 PM	3	Q. Okay. If you were not, do you know 03:36:13 PM
4	A. Yes, my counsel had a copy of this 03:34:10 PM	4	why not you were never added as an inventor to 03:36:14 PM
5	and — and showed it to me. 03:34:15 PM	, 5	this – this patent? 03:36:18 PM
6	Q. Okay. Before your counsel had showed 03:34:17 PM	6	A. No, I do not. 03:36:19 PM
7	it to you, had you had you seen this patent 03:34:19 PM	7	Q. Did you ever discuss that issue with 03:36:22 PM
8	before? 03:34:21 PM	8	Ms. Wight as to why you weren't added as an 03:36:24 PM
9	A. No, not — not in this form — 03:34:23 PM	9	as an inventor to the 009 patent? 03:36:29 PM
10	Q. Okay. 03:34:25 PM	10	A. No, I did not. 03:36:31 PM
11	A that I know no, not in this 03:34:26 PM	11	Q. Again, without giving substance, have 03:36:39 PM
12	form. 03:34:29 PM	12	you ever discussed why you were not added to the 03:36:43 PM
13	Q. Do you know whether or not this is 03:34:30 PM	13	009 patent with your counsel? That's a yes or 03:36:45 PM
14	one of the patents you turned up on your 03:34:31 PM	14	no question. 03:36:49 PM
15	computer search and we talked about earlier 03:34:33 PM	15	A. Repeat the question. 03:36:53 PM
16	today? 03:34:36 PM	16	Q. It's a yes or no question. 03:36:54 PM
17	A. Yes. 03:34:37 PM	17	A. Okay. 03:36:56 PM
18	Q. Is it? 03:34:38 PM	18	Q. So you don't give me substance of the 03:36:56 PM
19	A. It is. 03:34:39 PM	19	discussions. 03:36:58 PM
20	Q. Okay. Do you see the inventors of 03:34:39 PM	20	A. Okay. 03:36:59 PM
21	this patent application are listed as Lawrence 03:34:42 PM	21	Q. But my question is whether or not 03:36:59 PM
22	L. Kunz and Richard A. Klein? 03:34:46 PM	22	you've ever discussed with your counsel why you 03:37:00 PM
23	A. Yes. 03:34:49 PM	23	weren't added as an inventor to U.S. patent 03:37:03 PM
24	Q. Who is Richard A. Klein? 03:34:50 PM	24	number 6,515,009? 03:37:05 PM
25	A. I don't know who Richard A. Klein is. 03:34:52 PM	25	MR. NODINE: Let me just object to 03:37:10 PM
	·		
	Page 158		Page 160
1	Q. Okay. Under a little bit under 03:34:56 PM	1	the — to the question, insofar as it calls for 03:37:11 PM
2	their names, the application number is 03:35:00 PM	2	attorney-client privileged communications. I 03:37:12 PM
3	08/389,712; do you see that? 03:35:05 PM	3	understand that you're entitled to ask for a yes 03:37:15 PM
4	A. Yes. 03:35:11 PM	4	or no answer. 03:37:17 PM
5	Q. Do you understand that this patent 03:35:12 PM	5	But when you define the question so 03:37:18 PM
6	issued out of the application 08/389,712 03:35:13 PM	6	precisely, to the exact nature of — of the 03:37:20 PM

		Page 158
1	Q. Okay. Under a little bit under 03	3:34:56 PM
2	their names, the application number is	03:35-90 PM
3	08/389,712; do you see that?	3:35:05 PM
4	A. Yes. 03:35:11	PM
5	Q. Do you understand that this patent	03:35:12 PM
6	issued out of the application 08/389,712	03:35:13 PM
7	application? 03:35:1	7 PM
8	MR. NODINE: Objection, lack of	03:35:20 PM
9	foundation. 03:35:2	1 PM
10	THE WITNESS: I do now, if you're	03:35:22 PM
11	telling me that. 03:35:2	23 PM
12	Q. (By Mr. Timmons) Let's — and that	03:35:25 PM
13	was the application in accordance with Kunz 17,	03:35:27 PM
14	the letter from December 3rd, 1996, in which yo	ou 03:35:32 PM
15	were to become named as an inventor?	03:35:36 PM
16	A. Okay. 03:35:38	3 PM
17	Q. That's what I'm asking you. If 0	3:35:38 PM
18	you if you would turn to UAB 00089, please.	03:35:39 PM
19	And the - the application number from the cha	rt 03:35:45 PM
20	you got from NeoRx is the same as the	03:35:50 PM
21	application number from which the 009 patent	03:35:53 PM
22	issued; is that correct? 03:35	:56 PM
23	issued; is that correct? 03:35 A. That's correct. 03:35:	59 PM
24		
25	were ever added as to as an inventor to UAB	

1	the — to the question, insofar as it calls for	03:37:11 PM
2	attorney-client privileged communications. I	03:37:12 PM
3	understand that you're entitled to ask for a yes	03:37:15 PM
4	or no answer. 03:37	:17 PM
5	But when you define the question so	03:37:18 PM
6	precisely, to the exact nature of of the	03:37:20 PM
7	question, you end up, I think, invading the	03:37:24 PM
8	privilege. 03:37:27	7 PM
9	MR. TIMMONS: I see your point. Let	03:37:30 PM
10	me try to come up with something that will	03:37:31 PM
11	satisfy both our our needs. 03	3:37:32 PM
12	Q. (By Mr. Timmons) Did you ever	03:37:36 PM
13	discuss the issue of the inventorship of U.S.	03:37:36 PM
14	patent patent number 6,515,009 with your	03:37:41 PM
15	counsel, yes or no? 03:3	7:46 PM
16	A. Yes. 03:37:51	l PM
17	Q. Okay. Did you ever discuss the issue	03:37:52 PM
18	of the inventorship of U.S. patent number	03:37:53 PM
19	6,515,009 with any representatives of Boston	02:27:56 814
	0,515,005 Widt any representatives of boston	03:37:56 PM
20	Scientific? 03:38:0	
20 21	• •	3 PM
	Scientific? 03:38:00	3 PM I PM
21	Scientific? 03:38:00 A. No. 03:38:04	3 PM 1 PM 03:38:08 PM
21 22	Scientific? 03:38:00 A. No. 03:38:00 Q. If you would turn, please, to column 65 of the 009 patent, please. If you could reach	3 PM 1 PM 03:38:08 PM
21 22 23	Scientific? 03:38:04 A. No. 03:38:04 Q. If you would turn, please, to column 65 of the 009 patent, please. If you could read	3 PM 1 PM 03:38:08 PM 1 03:38:12 PM 38:23 PM

	Page 161		Page 163
1	Q. Did you have any contribution to what 03:38:39 PM	1	Q. That issued on February 4th, 2003, 03:41:17 PM
2	is claimed in claim 1 of the 009 patent? 03:38:41 PM	2	six and a half years later; is that correct? 03:41:21 PM
3	A. Yes, I did. 03:38:47 PM	3	A. Yes. 03:41:24 PM
4	Q. What was your contribution? 03:38:48 PM	4	Q. Okay. Did you ever ask why you 03:41:24 PM
5	A. In – in discussions with Dr. Kunz, 03:38:53 PM	5	weren't added in that six-and-a-half years to be 03:41:27 PM
6	we — we discussed or — or formulated this 03:38:56 PM	6	an inventor to the 009 patent? 03:41:29 PM
7	approach or the approach of using cytostatic 03:39:04 PM	7	A. No. 03:41:32 PM
8	drugs to inhibit vascular smooth muscle cell 03:39:11 PM	8	Q. Do you know why you weren't added in 03:41:34 PM
9	contraction and migration. 03:39:14 PM	9	the subsequent six and a half years to be an 03:41:36 PM
10	Q. And did you ever discuss with 03:39:16 PM	10	inventor of the 009 patent? 03:41:39 PM
11	Dr. Kunz whether or not you should be added as 03:39:17 PM	,11	A. No, I do not. 03:41:41 PM
12	an inventor to the U.S. patent number 03:39:20 PM	12	(Whereupon, a discussion ensued off the record.) 03:43:13 PM
13	6,515,009? 03:39:24 PM	13	MR. TIMMONS: I would like to mark 03:43:13 PM
14	A. All I ever saw were the the 03:39:36 PM	14	two documents, the first being looks like a 03:43:13 PM
15	applications, and, like, for instance, this with 03:39:37 PM	15	fax transmission sheet from yourself to Janet 03:43:17 PM
16	the claims. And in looking at these — the 03:39:41 PM	16	Embretson, dated January 30th, 2003, BSM 9146 03:43:21 PM
17	claims, the drafts that were sent to me, at 03:39:47 PM	17	through 49, and the second one being Anderson 03:43:29 PM
18	at you know, on several occasions, I did 03:39:52 PM	18	Exhibit 14, which is U.S. patent number 03:43:35 PM
19	mention to Dr. Kunz that that I thought, and 03:39:55 PM	19	5,811,447. 03:43:39 PM
20	actually to Dr. Schroff that that I should be 03:39:59 PM	20	(WHEREUPON, Anderson Exhibit 13 and Anderson 03:43:46 PM
21	included in these patents. 03:40:04 PM	21	Exhibit 14 were marked for identification.) 03:43:45 PM
22	And, you know, to my recollection, 03:40:09 PM	22	Q. (By Mr. Timmons) Okay. So there's 03:43:46 PM
23	Dr. Kunz's comment was that that the NeoRx 03:40:11 PM	23	one for you, and then one for your counsel 03:43:46 PM
24	legal office had a high turnover or they you 03:40:16 PM	24	underneath. Thank you. 03:43:48 PM
25	know, they were, you know, behind in their work 03:40:20 PM	25	MR. TIMMONS: Do do you have the 03:43:53 PM
	<u> </u>		· · · · · · · · · · · · · · · · · · ·
	Page 162		Page 164
1	Page 162 and that that all these things, you know, 03:40:24 PM	1	Page 164 47? It's not one of the ones we marked earlier. 03:43:53 PM
1 2	_	1 2	47? It's not one of the ones we marked earlier. 03:43:53 PM
	and that that all these things, you know, 03:40:24 PM	_	47? It's not one of the ones we marked earlier. 03:43:53 PM If not — 03:43:58 PM
2	and that that all these things, you know, 03:40:24 PM would eventually get done, that not to worry 03:40:27 PM	2	47? It's not one of the ones we marked earlier. 03:43:53 PM If not — 03:43:58 PM
2 3	and that that all these things, you know, 03:40:24 PM would eventually get done, that not to worry about it, we could continue to keep working on 03:40:29 PM	2	47? It's not one of the ones we marked earlier. 03:43:53 PM If not — 03:43:58 PM MR. MELORO: I don't believe so. 03:44:00 PM Yeah, I don't think so. 03:44:00 PM
2 3 4	and that that all these things, you know, would eventually get done, that not to worry about it, we could continue to keep working on our collaborative experiments and our 03:40:24 PM 03:40:24 PM 03:40:29 PM 03:40:32 PM	2 3 4	47? It's not one of the ones we marked earlier. 03:43:53 PM If not — 03:43:58 PM MR. MELORO: I don't believe so. 03:44:00 PM Yeah, I don't think so. 03:44:00 PM
2 3 4 5	and that that all these things, you know, would eventually get done, that not to worry about it, we could continue to keep working on our collaborative experiments and our collaboration, but that not to worry, that 03:40:24 PM 03:40:27 PM 03:40:39 PM 03:40:37 PM	2 3 4 5	47? It's not one of the ones we marked earlier. 03:43:53 PM If not — 03:43:58 PM MR. MELORO: I don't believe so. 03:44:00 PM Yeah, I don't think so. 03:44:00 PM I'm sorry, so the fax is 13? 03:44:09 PM
2 3 4 5 6	and that that all these things, you know, would eventually get done, that not to worry about it, we could continue to keep working on our collaborative experiments and our collaboration, but that not to worry, that the the NeoRx patent office was, you know, 03:40:24 PM 03:40:27 PM 03:40:29 PM 03:40:37 PM 03:40:37 PM	2 3 4 5 6	47? It's not one of the ones we marked earlier. 03:43:53 PM If not — 03:43:58 PM MR. MELORO: I don't believe so. 03:44:00 PM Yeah, I don't think so. 03:44:00 PM I'm sorry, so the fax is 13? 03:44:09 PM MR. TIMMONS: The fax is 13 — 03:44:10 PM
2 3 4 5 6 7	and that that all these things, you know, would eventually get done, that not to worry about it, we could continue to keep working on our collaborative experiments and our collaboration, but that not to worry, that our collaboration collaboration, but that not to worry our collaboration collaboration collaboration, but that not to worry our collaboration collaboration collaboration collaboration, but that not to worry our collaboration coll	2 3 4 5 6 7	47? It's not one of the ones we marked earlier. 03:43:53 PM If not — 03:43:58 PM MR. MELORO: I don't believe so. 03:44:00 PM Yeah, I don't think so. 03:44:00 PM I'm sorry, so the fax is 13? 03:44:09 PM MR. TIMMONS: The fax is 13 — 03:44:10 PM MR. MELORO: And the patent is 14? 03:44:11 PM MR. TIMMONS: — and the patent is 03:44:14 PM
2 3 4 5 6 7 8	and that that all these things, you know, would eventually get done, that not to worry about it, we could continue to keep working on our collaborative experiments and our collaboration, but that not to worry, that 03:40:29 PM collaboration, but that not to worry, that 03:40:37 PM the the NeoRx patent office was, you know, understaffed or or had a turnover rate of new people. 03:40:46 PM	2 3 4 5 6 7 8	47? It's not one of the ones we marked earlier. 03:43:53 PM If not — 03:43:58 PM MR. MELORO: I don't believe so. 03:44:00 PM Yeah, I don't think so. 03:44:00 PM I'm sorry, so the fax is 13? 03:44:09 PM MR. TIMMONS: The fax is 13 — 03:44:10 PM MR. MELORO: And the patent is 14? 03:44:11 PM MR. TIMMONS: — and the patent is 03:44:14 PM
2 3 4 5 6 7 8 9	and that that all these things, you know, would eventually get done, that not to worry about it, we could continue to keep working on our collaborative experiments and our collaboration, but that not to worry, that the the NeoRx patent office was, you know, understaffed or or had a turnover rate of new Q. Okay.	2 3 4 5 6 7 8 9	47? It's not one of the ones we marked earlier. 03:43:53 PM If not — 03:43:58 PM MR. MELORO: I don't believe so. 03:44:00 PM Yeah, I don't think so. 03:44:09 PM I'm sorry, so the fax is 13? 03:44:10 PM MR. TIMMONS: The fax is 13 — 03:44:11 PM MR. TIMMONS: — and the patent is 03:44:14 PM 14. 03:44:16 PM Q. (By Mr. Timmons) Why don't you take 03:44:17 PM
2 3 4 5 6 7 8 9	and that that all these things, you know, would eventually get done, that not to worry about it, we could continue to keep working on our collaborative experiments and our collaboration, but that not to worry, that the the NeoRx patent office was, you know, understaffed or or had a turnover rate of new Q. Okay. Q. Okay. Q. Okay. Q. Okay. Q. Okay. Q. Osay.	2 3 4 5 6 7 8 9	47? It's not one of the ones we marked earlier. 03:43:53 PM If not — 03:43:58 PM MR. MELORO: I don't believe so. 03:44:00 PM Yeah, I don't think so. 03:44:09 PM I'm sorry, so the fax is 13? 03:44:10 PM MR. TIMMONS: The fax is 13 — 03:44:10 PM MR. MELORO: And the patent is 14? 03:44:11 PM MR. TIMMONS: — and the patent is 03:44:14 PM 14. 03:44:16 PM Q. (By Mr. Timmons) Why don't you take 03:44:17 PM a look at the — the fax, please, first, and 03:44:17 PM
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2 3 4 5 6 7 8 9 10 11 12	and that that all these things, you know, would eventually get done, that not to worry about it, we could continue to keep working on our collaborative experiments and our collaboration, but that not to worry, that the the NeoRx patent office was, you know, understaffed or or had a turnover rate of new people. Q. Okay. Q. Okay. Q. Okay. Q. I'm sorry. A he insinuated that it was, you O3:40:24 PM O3:40:29 PM O3:40:37 PM O3:40:39 PM O3:40:43 PM O3:40:47 PM O3:40:47 PM O3:40:49 PM O3:40:49 PM O3:40:50 PM	2 3 4 5 6 7 8 9 10 11	47? It's not one of the ones we marked earlier. 03:43:53 PM If not — 03:43:58 PM MR. MELORO: I don't believe so. 03:44:00 PM Yeah, I don't think so. 03:44:09 PM I'm sorry, so the fax is 13? 03:44:10 PM MR. TIMMONS: The fax is 13 — 03:44:10 PM MR. MELORO: And the patent is 14? 03:44:11 PM MR. TIMMONS: — and the patent is 03:44:14 PM 14. 03:44:16 PM Q. (By Mr. Timmons) Why don't you take 03:44:17 PM a look at the — the fax, please, first, and 03:44:17 PM then I'm going to ask you some questions about 03:44:20 PM
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	and that — that all these things, you know, would eventually get done, that — not to worry about it, we could continue to keep working on our collaborative experiments and our collaboration, but that — not to worry, that the — the NeoRx patent office was, you know, understaffed or — or had a turnover rate of new people. Q. Okay. A. So — Q. Okay. A. So — Q. I'm sorry. A. — he insinuated that it was, you A. — he insinuated that it was, you Q. Okay. Q. Okay. Q. Okay. A. — if things weren't getting done. Q. And Anna Lewak Wight wrote to you in O3:40:24 PM O3:40:25 PM O3:40:56 PM O3:40:56 PM O3:40:56 PM O3:40:56 PM O3:40:58 PM	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	47? It's not one of the ones we marked earlier. 03:43:53 PM If not — 03:43:58 PM MR. MELORO: I don't believe so. 03:44:00 PM Yeah, I don't think so. 03:44:09 PM I'm sorry, so the fax is 13? 03:44:10 PM MR. TIMMONS: The fax is 13 — 03:44:10 PM MR. TIMMONS: — and the patent is 14? 03:44:11 PM MR. TIMMONS: — and the patent is 03:44:14 PM 14. 03:44:16 PM Q. (By Mr. Timmons) Why don't you take 03:44:17 PM a look at the — the fax, please, first, and 03:44:17 PM then I'm going to ask you some questions about 03:44:20 PM it. 03:44:22 PM A. Okay. 03:44:41 PM Q. Okay. Let's — let's take a quick 03:44:46 PM look at U.S. patent number 5,811,477. That 03:44:54 PM issued in September 1988; do you see that? 03:44:59 PM Q. 1998, yes, thank you. And you are a 03:44:59 PM
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	Page 165	1 490 107
	when I was showed or or when I did a 03:45:21 PM	1 A. As I recall, there was a cover letter 03:48:20 PM
	2 search on the Internet for for patents. 03:45:25 PM	2 to this packet, and it was — and — and I don't 03:48:21 PM
	Q. Okay. Let's take a look at the fax 03:45:30 PM	3 recall exactly the wording of it, so so I 03:48:29 PM
	4 sheet you sent to Ms. Embretson. You state that 03:45:41 PM	4 can't remember exactly what — what it said. 03:48:34 PM
	5 you have read over the materials you sent me. 03:45:46 PM	5 But the — the gist was, or as I 03:48:39 PM
	6 Do you see that? 03:45:49 PM	6 recall, the the vein of the letter was, you 03:48:43 PM
	7 A. Yes. 03:45:50 PM	7 know, to the effect that that we are 03:48:50 PM
	8 Q. What were the materials that 03:45:50 PM	8 reviewing these patents and these claims, and 03:48:54 PM
	9 Miss Embretson Ms. Embretson sent you? 03:45:51 PM	9 and, you know, do you you know, do you or 03:48:58 PM
1	A. I didn't save copies of them, but as 03:45:56 PM	10 I don't — I can't recall whether it said do 03:49:05 PM
1	1 I recall, it was a series of of documents, 03:46:01 PM	11 you should you be taken off or do you daim 03:49:08 PM
1	2 you know, lists of issued claims and then a 03:46:09 PM	, , , , , , , , , , , , , , , , , , , ,
	3 form and then a form with a place for my - 03:46:15 PM	3011012
	44 for a signature. 03:46:23 PM	13 Q. And did you keep a copy of that 03:49:15 PM
		14 letter? 03:49:15 PM
		15 A. No, I did not. 03:49:17 PM
	03.10.31	16 MR. TIMMONS: Larry, again, if — if 03:49:19 PM
	7 have a copy of it, so I can't remember exactly, 03:46:33 PM	17 a copy of that letter is in UAB's files, I would 03:49:20 PM
	8 but as I recall, the this time period, the 03:46:37 PM	18 request a copy of it, please. Thank you. 03:49:23 PM
	9 the gist of the form was to sign it if you agree 03:46:48 PM	19 Q. (By Mr. Timmons) Okay. And in 03:49:29 PM
2	0 that you should be removed from this patent, if 03:46:54 PM	20 response, in this paragraph, you state that 03:49:29 PM
2	1 you're your name should be removed from this 03:46:57 PM	21 "some of the primary claims are the direct 03:49:32 PM
2	2 patent. 03:47:00 PM	22 result of my input." What was the basis for 03:49:34 PM
2	Q. Okay. And the first — the second 03:47:01 PM	23 for that statement? Or let me let me ask, 03:49:38 PM
2	4 paragraph talks about European patent 03:47:03 PM	24 is — are the three attached pages the claims 03:49:43 PM
2	5 application number 94916743. And were you given 03:47:06 PM	25 that you are reviewing with regard to the 447 03:49:47 PM
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	Page 166	
	Page 166 1 a form with regard to the claims of that patent 03:47:12 PM	Page 168
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5 6 7 8 9	a form with regard to the claims of that patent 03:47:12 PM application, as to whether or not you should be 03:47:15 PM removed as an inventor? 03:47:16 PM A. I believe so, yes. 03:47:19 PM Q. And you state that you agree that you 03:47:20 PM had no input into these claims and you agreed to 03:47:21 PM be removed from that patent? 03:47:24 PM A. Yes. 03:47:26 PM Q. Okay. And then the second paragraph 03:47:26 PM is regards the claims of a therapeutic 03:47:30 PM	1 patent? 03:49:50 PM 2 A. Yes. 03:49:54 PM 3 Q. Okay. So what — what was the basis 03:49:55 PM 4 for your daim that some of the primary — for 03:49:56 PM 5 your statement that "some of the primary daims 03:49:58 PM 6 are the direct result of my input"? 03:49:59 PM 7 A. It was my opinion in reading these 03:50:02 PM 8 that I had contributed significantly to the 03:50:07 PM 9 development of these ideas, in collaboration 03:50:11 PM 10 with Dr. Kunz. 03:50:14 PM
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3 3 4 5 6 7 7 8 8 9 10 11 12 13 14	a form with regard to the claims of that patent application, as to whether or not you should be application, as to whether or not you should be removed as an inventor? 03:47:16 PM A. I believe so, yes. 03:47:19 PM Q. And you state that you agree that you 03:47:20 PM had no input into these claims and you agreed to 03:47:21 PM be removed from that patent? 03:47:24 PM A. Yes. 03:47:26 PM Q. Okay. And then the second paragraph 03:47:26 PM is regards the claims of a therapeutic 03:47:30 PM inhibitor of vascular smooth muscle cells. 03:47:38 PM That's from the 441 patent. Do you see that? 03:47:45 PM A. Yes. 03:47:45 PM Ms. Embretson, or were you just given the claims 03:47:47 PM	1 patent? 2 A. Yes. 3 Q. Okay. So what — what was the basis 03:49:55 PM 4 for your daim that some of the primary — for 03:49:56 PM 5 your statement that "some of the primary daims 03:49:58 PM 6 are the direct result of my input"? 7 A. It was my opinion in reading these 03:50:02 PM 8 that I had contributed significantly to the 03:50:07 PM 9 development of these ideas, in collaboration 03:50:11 PM 10 with Dr. Kunz. 11 Q. Okay. I'm going to ask you some 03:50:16 PM 12 follow-up questions on that, but we have to 03:50:17 PM 13 change the tape. 14 THE VIDEOGRAPHER: Here marks the end 03:50:22 PM 15 of videotape number 3 in the deposition of Peter 03:50:22 PM
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10 10 11 12 13 14 15 16 17 18 19 20 21 22	a form with regard to the claims of that patent application, as to whether or not you should be application, as to whether or not you should be removed as an inventor? 03:47:16 PM A. I believe so, yes. 03:47:19 PM Q. And you state that you agree that you 03:47:20 PM had no input into these claims and you agreed to 03:47:21 PM be removed from that patent? 03:47:26 PM Q. Okay. And then the second paragraph 03:47:26 PM is regards the claims of a therapeutic 03:47:30 PM inhibitor of vascular smooth muscle cells. 03:47:38 PM That's from the 441 patent. Do you see that? 03:47:45 PM A. Yes. 03:47:45 PM A. Yes. 03:47:51 PM Ms. Embretson, or were you just given the claims 03:47:51 PM A. If I recall, I think I I don't 03:47:51 PM or not you should be removed as an inventor from 03:47:57 PM U.S. patent number 5,811,447? 03:48:08 PM Q. Okay. Did did Ms. Embretson tell 03:48:08 PM	1 patent? 2 A. Yes. 3 Q. Okay. So what — what was the basis 03:49:55 PM 4 for your daim that some of the primary — for 03:49:56 PM 5 your statement that "some of the primary daims 03:49:58 PM 6 are the direct result of my input"? 7 Q. It was my opinion in reading these 03:50:02 PM 8 that I had contributed significantly to the 03:50:07 PM 9 development of these ideas, in collaboration 03:50:11 PM 10 with Dr. Kunz. 11 Q. Okay. I'm going to ask you some 03:50:16 PM 12 follow-up questions on that, but we have to 03:50:17 PM 13 change the tape. 14 THE VIDEOGRAPHER: Here marks the end 03:50:21 PM 15 of videotape number 3 in the deposition of Peter 03:50:22 PM 16 Anderson. We are off the record, 3:50 p.m. 17 (Whereupon, there was a brief recess.) 18 THE VIDEOGRAPHER: Here begins 03:54:54 PM 19 videotape number 4 in the deposition of Peter 03:54:57 PM 20 Anderson. We are back on the record, 3:54 p.m. 03:54:58 PM 21 MR. TIMMONS: Could you just read his 03:55:02 PM 22 last answer, please? 23 (Whereupon, the record was read by the court 03:55:32 PM
10 11 12 13 14 15 16 17 18 19 20 21 22 23	a form with regard to the claims of that patent application, as to whether or not you should be application, as to whether or not you should be removed as an inventor? 03:47:16 PM A. I believe so, yes. 03:47:19 PM Q. And you state that you agree that you 03:47:20 PM had no input into these claims and you agreed to 03:47:21 PM be removed from that patent? 03:47:26 PM Q. Okay. And then the second paragraph 03:47:26 PM is regards the claims of a therapeutic 03:47:30 PM inhibitor of vascular smooth musde cells. 03:47:38 PM That's from the 441 patent. Do you see that? 03:47:42 PM A. Yes. 03:47:45 PM Q. Were you given the patent by 03:47:46 PM Ms. Embretson, or were you just given the claims 03:47:47 PM to the patent? 03:47:51 PM A. If I recall, I think I I don't 03:47:51 PM Q. Okay. Were you being asked whether 03:47:55 PM Or not you should be removed as an inventor from 03:47:57 PM U.S. patent number 5,811,447? 03:48:08 PM Q. Okay. Did did Ms. Embretson tell 03:48:08 PM you why she thought you should be removed as an 03:48:12 PM	1 patent? 2 A. Yes. 3 Q. Okay. So what — what was the basis 03:49:55 PM 4 for your claim that some of the primary — for 03:49:56 PM 5 your statement that "some of the primary daims 03:49:58 PM 6 are the direct result of my input"? 7 A. It was my opinion in reading these 03:50:02 PM 8 that I had contributed significantly to the 03:50:07 PM 9 development of these ideas, in collaboration 03:50:11 PM 10 with Dr. Kunz. 11 Q. Okay. I'm going to ask you some 03:50:16 PM 12 follow-up questions on that, but we have to 03:50:17 PM 13 change the tape. 14 THE VIDEOGRAPHER: Here marks the end 03:50:21 PM 15 of videotape number 3 in the deposition of Peter 03:50:22 PM 16 Anderson. We are off the record, 3:50 p.m. 17 (Whereupon, there was a brief recess.) 18 THE VIDEOGRAPHER: Here begins 03:54:54 PM 19 videotape number 4 in the deposition of Peter 03:54:57 PM 20 Anderson. We are back on the record, 3:54 p.m. 21 MR. TIMMONS: Could you just read his 03:55:02 PM 22 last answer, please? 23 03:55:03 PM

	Page 169		
1	basis for your daim that some of the primary 03:49:56 PM	1	THE WITNES
2	for your statement that 'some of the primary 03:49:58 PM	2	collaborations with Di
3	daims are the direct result of my input? 03:49:59 PM	3	Dr. Schroff, they wen
4	ANSWER: It was my opinion in reading 03:50:02 PM	4	area. And as we wor
5	these that I had contributed significantly to 03:50:07 PM	5	ideas that are embod
6	the development of these ideas, in collaboration 03:50:11 PM	6	became more familiar
7	with Dr. Kunz?") 03:50:14 PM	7	Q. (By Mr. Timn
8	Q. (By Mr. Timmons) Okay. And is the 03:55:32 PM	8	back to the the cov
9	same reason the reason that you stated this 03:55:42 PM	9	you see the other liste
10	daim would not have been possible without my 03:55:45 PM	10	indude John M. Reno
11	direct involvement and scientific expertise? 03:55:47 PM	· 11	Mr. Reno is?
12	A. Yes. 03:55:51 PM	12	A. No, I do not.
13	Q. Okay. And you state that "I have 03:55:52 PM	13	Q. Do you know
14	noted the" area "areas of these claims where 03:55:57 PM	14	A. At one point,
15	my direct input was instrumental in developing 03:55:59 PM	15	Cambridge came to U
16	these daims." Is that the portions that you've 03:56:02 PM	16	me, so I I met then
17	underlined throughout the claims and put your 03:56:04 PM	17	names. I think David
18	initials by over the next three pages? 03:56:06 PM	18	but I can't remember
19	A. The areas that I underlined are 03:56:09 PM	19	but I can't remember
20	are some, but not all, of the — the ones. I — 03:56:12 PM	20	person, but I - and I
21	I just picked out some of the more glaring 03:56:19 PM	21	was Grainger that t
22	or what I thought were most representative 03:56:23 PM	22	me.
23	issues that that I brought to the table that 03:56:29 PM	23	Q. And there's to
24	then became part of a collaborative or a — a 03:56:37 PM	24	Cambridge, James Me
25	combined approach. 03:56:42 PM	25	Were they anybody th

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Page 171
SS: When I began my
                             03:57:51 PM
Or. Kunz and -- and
                          03:57:52 PM
re not familiar with the
                          03:57:55 PM
orked together to develop the 03:57:59 PM
died in these daims, they
                            03:58:04 PM
ar with the area.
                          03:58:11 PM
mons) If you could turn
                          03:58:16 PM
ver of the 447 patent, do
                           03:58:16 PM
ted inventors there, they
                           03:58:21 PM
o. Do you know who Dr. or
                              03:58:24 PM
                   03:58:29 PM
                   03:58:30 PM
w who David Grainger is?
                            03:58:32 PM
t, some investigators from 03:58:37 PM
UAB with Larry and met with
                               03:58:45 PM
m, but I don't recall their 03:58:53 PM
d Grainger was one of them.
                             03:59:01 PM
r -- there were two of them,
                             03:59:04 PM
r the name of the other
                            03:59:06 PM
I can't be certain that it 03:59:08 PM
that was visiting with
                         03:59:11 PM
                 03:59:14 PM
two more names from
                           03:59:15 PM
etcalf and Peter Weissberg.
                              03:59:16 PM
hat you met at UAB?
                            03:59:21 PM
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			Page 170
1	Q. It states next that "I am a	03:5	
2	cardiovascular pathologist, with many years	of	03:56:48 PM
3	experience in this" area, I think area.	03	:56:51 PM
4	A. Yeah, sorry. Spell check.		
5	Q. Spell check doesn't work when you	got	03:56:56 PM
6	it right. 03:56	:57 P	М
7	 A. I can spell, just don't use the right 	03:	56:58 PM
8	word. 03:57	7:00 I	PM
9	Q. What was the area that you were		03:57:01 PM
10	talking about in this letter?	3:57	:01 PM
11	 A. In the area of cardiovascular 	03:	57:04 PM
12	applications. 03:	57:10	PM
13	Q. Okay. And then you write, the	0	3:57:12 PM
14	"the NeoRx investigators were NOT" - N-O-	T in	03:57:14 PM
15	all capital letters "familiar with this area	03:	57:18 PM
16	and they depended upon me to provide this	;	03:57:21 PM
17	input." Who were the NeoRx investigators t	that	03:57:24 PM
18	you were talking about there?		
19	A. At that point, Dr. Kunz and	03:5	7:29 PM
20	Dr. Schroff were the the two NeoRx	(03:57:31 PM
21	investigators that I had had been working	}	03:57:36 PM
22	with. 03:57:		
23	Q. And they weren't familiar with the	03	3:57:42 PM
24			43 PM
25	MR. NODINE: Objection to form.		
	•	_	

		Page 172
1	 A. Again, I I may have, but I can't 	03:59:24 PM
2	recall exactly, you know, who who it was	03:59:28 PM
3	that that came with Larry to to visit my	03:59:31 PM
4	lab in — in Birmingham. 03	:59:36 PM
5	Q. And when they advised your lab, did	03:59:38 PM
6	you do any experimental work in conjunction	with 03:59:41 PM
7	those investigators from Cambridge?	03:59:45 PM
8	 We didn't do any experimental work. 	03:59:48 PM
9	If I remember correctly, they toured our anim	al 03:59:51 PM
10	lab, but we didn't do any collaborative work	03:59:55 PM
11	or or none of the experiments that I was	03:59:57 PM
12	working on with Larry did we, you know, atter	npt 04:00:01 PM
13	to do in in Birmingham.	1:00:07 PM
13 14	to do in in Birmingham. 0- Q. Okay. If you would turn back again	
	•	04:00:09 PM
14	Q. Okay. If you would turn back again	04:00:09 PM 1 04:00:13 PM
14 15	Q. Okay. If you would turn back again to the letter. I apologize for jumping back and forth. You can put the 447 patent aside for	04:00:09 PM 1 04:00:13 PM
14 15 16	Q. Okay. If you would turn back again to the letter. I apologize for jumping back and forth. You can put the 447 patent aside for	04:00:09 PM d 04:00:13 PM 04:00:17 PM :18 PM
14 15 16 17	Q. Okay. If you would turn back again to the letter. I apologize for jumping back and forth. You can put the 447 patent aside for right now. O4:00 What before we get to the the	04:00:09 PM d 04:00:13 PM 04:00:17 PM :18 PM 04:00:23 PM
14 15 16 17 18	Q. Okay. If you would turn back again to the letter. I apologize for jumping back and forth. You can put the 447 patent aside for right now. 04:00	04:00:09 PM i 04:00:13 PM 04:00:17 PM :18 PM 04:00:23 PM c 04:00:25 PM
14 15 16 17 18 19	Q. Okay. If you would turn back again to the letter. I apologize for jumping back and forth. You can put the 447 patent aside for right now. What — before we get to the — the claims on the last three pages, your — your fact transmission sheet is dated January 30th, 2003	04:00:09 PM i 04:00:13 PM 04:00:17 PM :18 PM 04:00:23 PM c 04:00:25 PM
14 15 16 17 18 19 20	Q. Okay. If you would turn back again to the letter. I apologize for jumping back and forth. You can put the 447 patent aside for right now. What — before we get to the — the claims on the last three pages, your — your fact transmission sheet is dated January 30th, 2003	04:00:09 PM d 04:00:13 PM 04:00:17 PM :18 PM 04:00:23 PM c 04:00:25 PM d; 04:00:30 PM 00:34 PM
14 15 16 17 18 19 20 21	Q. Okay. If you would turn back again to the letter. I apologize for jumping back and forth. You can put the 447 patent aside for right now. What — before we get to the — the claims on the last three pages, your — your far transmission sheet is dated January 30th, 2003 do you see that? A. Yes. 04:00:3	04:00:09 PM d 04:00:13 PM 04:00:17 PM :18 PM 04:00:23 PM x 04:00:25 PM d; 04:00:30 PM 00:34 PM
14 15 16 17 18 19 20 21 22	Q. Okay. If you would turn back again to the letter. I apologize for jumping back and forth. You can put the 447 patent aside for right now. What before we get to the the claims on the last three pages, your your fact transmission sheet is dated January 30th, 2003 do you see that?	04:00:09 PM d 04:00:13 PM 04:00:17 PM :18 PM 04:00:23 PM x 04:00:25 PM d; 04:00:30 PM 00:34 PM

		Page 17	73	
	1	Q. — up here. Yeah. 04:00:44 PM	1	drafts that went in to — for subn
	2	When did Ms. Embretson approach you 04:00:45 PM	1 2	I - I never had any of the paten
	3	with the materials regarding your inventorship 04:00:48 PM	3	didn't had no way of tracing b
	4	or lack thereof in the 447 patent? 04:00:53 PM	4	.Q. Did — have you ever lea
	5	A. I don't have a a or I didn't 04:01:00 PM	5	Ms. Embretson's attempts to have
	6	keep a copy of the cover letter, so I don't know 04:01:02 PM	6	an inventor from the 447 had an
	7	for sure when it was. It was sometime, though, 04:01:05 PM	1 7	any impending purchase of the p
	8	you know, just prior to to January. I 04:01:11 PM	8	Scientific?
	9	don't - I don't know if it was a week prior or 04:01:14 PM	9	A. No, I have no - no indic
	10	a month prior. 04:01:18 PM	10	no knowledge of that.
	11	Q. In her cover letter to you, did 04:01:48 PM	11	Q. Let's - let's look at the
	12	Ms. Embretson mention anything about any 04:01:52 Pl	M 12	that you marked up, please. In
	13	impending purchases or licenses of any of the 04:01:56 PM	13	you underlined, in the first claim,
	14	NeoRx patents? 04:02:00 PM	14	of the claim that - that reads "to
	15	A. Not to my knowledge. 04:02:03 PM	15	contraction of vascular smooth n
	16	Q. Did she mention any possible deals 04:02:05 PM	16	while not eliminating their ability
	17	between Boston Scientific and NeoRx regarding 04:02:09 Pt	M 17	extracellular matrix." Do you see
	18	the NeoRx patents? 04:02:14 PM	18	A. Yes.
	19	A. No. I - I mean, I don't - I don't 04:02:16 PM	19	Q. Why did you underline t
	20	recall that, any mention of that in the 04:02:17 PM	20	your - your initials next to it?
	21	letter. 04:02:20 PM	21	A. As I — I stated before, I
	22	Q. Did you know that in in 04:02:21 PM	22	know, it was 6:30 at night, I was
	23	approximately April, 2003, Boston Scientific 04:02:25 PM	23	the papers off my desk, and I just
	24	purchased or licensed patents from NeoRx? 04:02:28 PM	24	over these claims. And to suppo
	25	A. No, I did not know that. 04:02:34 PM	25	that I thought I should be left or
_	-		,,	

	Page 175
1	drafts that went in to – for submission. So 04:04:06 PM
2	I - I never had any of the patent numbers, so I 04:04:10 PM
3	didn't had no way of tracing back. 04:04:13 PM
4	Q. Did — have you ever learned that 04:04:19 PM
5	Ms. Embretson's attempts to have you removed as 04:04:23 PM
6	an inventor from the 447 had anything to do with 04:04:28 PM
7	any impending purchase of the patents by Boston 04:04:31 PM
8	Scientific? 04:04:36 PM
9	A. No, I have no — no indication, no — 04:04:39 PM
10	no knowledge of that. 04:04:45 PM
11	Q. Let's let's look at the daims 04:04:49 PM
12	that you marked up, please. In the first page, 04:04:51 PM
13	you underlined, in the first claim, the portion 04:04:57 PM
14	of the claim that — that reads "to inhibit the 04:05:00 PM
15	contraction of vascular smooth muscle cells, 04:05:03 PM
16	while not eliminating their ability to secrete 04:05:07 PM
17	extracellular matrix." Do you see that? 04:05:12 PM
18	A. Yes. 04:05:14 PM
19	Q. Why did you underline that and put 04:05:14 PM
20	your your initials next to it? 04:05:16 PM
21	A. As I I stated before, I was you 04:05:18 PM
22	know, it was 6:30 at night, I was trying to get 04:05:21 PM
23	the papers off my desk, and I just was reading 04:05:23 PM
24	over these claims. And to support my statement 04:05:26 PM
25	that I thought I should be left on these claims, 04:05:30 PM

	·
	Page 174
1	Q. Do you know that today, other than 04:02:35 PM
2	what 04:02:36 PM
. 3	A. Yes. 04:02:37 PM
4	Q I've just told you? 04:02:38 PM
5	A. Yes. 04:02:39 PM
6	Q. Okay. I'll when when did you 04:02:41 PM
7	first learn that Boston Scientific had purchased 04:02:42 PM
8	or licensed patents from NeoRx? 04:02:44 PM
9	A. I don't recall, I don't recall when 04:02:54 PM
10	it was, but I — I think it was due in a — in 04:02:59 PM
11	a you know, I'm a lot of List Serves for 04:03:09 PM
12	for interventional cardiology, and it might have 04:03:15 PM
13	come up as a press release on one of those. 04:03:18 PM
14	But I - you know, I didn't - I 04:03:21 PM
15	didn't go out looking for it. I you know, I 04:03:23 PM
16	just sort of fortuitously ran across it in 04:03:25 PM
17	some some communication, some, you know, 04:03:29 PM
18	public communication. 04:03:32 PM
19	Q. Were you aware that the 009 patent, 04:03:34 PM
20	Klein Exhibit 7, was one of the patents that was 04:03:43 PM
21	purchased by Boston Scientific from NeoRx? 04:03:46 PM
22	A. No, I was not. The the only 04:03:52 PM
23	records I had of any of the patent applications 04:03:58 PM
24	were the whatever you you call it, the 04:04:01 PM

submission number or -- or the -- from the

1	I just underlined and marked things that I 04:05:34 PM
2	thought were were fairly representative of 04:05:37 PM
3	the types of input I had on our on our 04:05:43 PM
4	collaborative work and my collaborative work 04:05:48 PM
5	with Dr. Kunz. 04:05:50 PM
6	Q. And in addition to what you 04:05:52 PM
7	underlined, were there any other portions — 04:05:53 PM
8	reviewing them now, not at 6:30 at night, are 04:05:55 PM
9	there any other portions of daim 1 which you 04:05:58 PM
10	would say was your your contribution to claim 04:06:00 PM
11	1? 04:06:05 PM
12	MR. MELORO: Objection to form. 04:06:06 PM
13	MR. NODINE: Object to form also. 04:06:09 PM
14	Are you asking him now to take care and to go 04:06:09 PM
15	through deliberately and to underline portions? 04:06:13 PM
16	MR. TIMMONS: Well, I'm I'm asking 04:06:16 PM
17	him, maybe not to underline, but to indicate 04:06:17 PM
18	what what portions of the daim he he 04:06:19 PM
19	feels he also contributed to in claim 1. 04:06:21 PM
20	MR. NODINE: Well, I just want to be 04:06:23 PM
21	dear that — that, you know, that effort may 04:06:25 PM
22	take some time, and you're if you want him to 04:06:27 PM
23	do that, that's fine. But I I don't want him 04:06:30 PM
24	to rush through that, if that's truly your 04:06:32 PM
25	question. 04:06:35 PM

Page 176

04:04:04 PM

	Page 177		Page 179
1		1	I don't want to torture you, but there's a lot 04:10:22 PM
2	•	2	of repetition here. 04:10:33 PM
3		3	A. Yeah. 04:10:35 PM
4	, , , , , , , , , , , , , , , , , , , ,	4	Q. If you want to make it a little bit 04:10:35 PM
5		5	shorter than your previous one and maybe refer 04:10:36 PM
6	A. The the general approach of using 04:07:00 PM	6	back, but, please 04:10:38 PM
7		7	A. Okay. 04:10:40 PM
8	cytochalasin family, to administered to blood 04:07:11 PM	8	Q feel comfortable, however you want 04:10:40 PM
9	vessels after an injury to inhibit contraction 04:07:19 PM	9	to say that. 04:10:41 PM
10	of vascular smooth muscle cells, while not 04:07:28 PM	10	A. Again, the same this contains many 04:10:53 PM
11	eliminating their ability to secrete 04:07:31 PM	11	of the same approaches that we had that we 04:10:57 PM
12	extracellular matrix, the you know, and then 04:07:35 PM	12	had discussed and and, you know, come 04:10:59 PM
13	the result of that activity results in or 04:07:38 PM	13	together, you know, with the — the ideas 04:11:03 PM
14	the the effects of that activity results in a 04:07:45 PM	14	collaboratively. 04:11:05 PM
15	biological stenting or or a prevention of the 04:07:49 PM	15	Q. Is there any significance to the 04:11:07 PM
16	contraction of the blood vessel, all so so 04:07:53 PM	16	asterisk that that's by this one, is that 04:11:09 PM
17	basically the entire embodiment of this first 04:07:59 PM	17	A. No. 04:11:13 PM
18	claim, I was involved in, again, not not only 04:08:02 PM	18	Q is there anything 04:11:14 PM
19	me, but I was involved in the development of 04:08:11 PM	19	A. In fact, some do, some don't, some 04:11:14 PM
20	that approach and that those ideas, using 04:08:15 PM	20	have checks 04:11:16 PM
21	those components in this setting to try and 04:08:19 PM	21	Q. Okay. 04:11:17 PM
22	elicit the specific effect that that is 04:08:22 PM	22	A I guess. 04:11:18 PM
23	described here, which is to hold the vessel open 04:08:27 PM	23	Q. I thought you might have been 04:11:19 PM
24	so it doesn't so you don't get a restenosis. 04:08:31 PM	24	prioritizing something. 04:11:20 PM
25	Q. Okay. Your name your initials and 04:08:35 PM	25	A. No, no. Probably 6:30 at night, I 04:11:21 PM
	Page 178		Page 190
1	Page 178 a checkmark is by claim 2. Why did you put your 04:08:38 PM	1	Page 180 was just doodling. 04:11:23 PM
1 2	a checkmark is by claim 2. Why did you put your 04:08:38 PM	1 2	was just doodling. 04:11:23 PM
	a checkmark is by claim 2. Why did you put your 04:08:38 PM initials and a check mark next to claim 2? 04:08:41 PM	2	was just doodling. 04:11:23 PM Q. Should have gone to law school. We 04:11:27 PM
2	a checkmark is by claim 2. Why did you put your 04:08:38 PM initials and a check mark next to claim 2? 04:08:41 PM A. The issue of — of using this 04:08:47 PM	2 3	was just doodling. 04:11:23 PM Q. Should have gone to law school. We 04:11:27 PM start at 10 o'clock in the morning and work 04:11:30 PM
2 3	a checkmark is by claim 2. Why did you put your 04:08:38 PM initials and a check mark next to claim 2? 04:08:41 PM A. The issue of — of using this 04:08:47 PM approach, the cytostatic drug approach, as a — 04:08:55 PM	2 3 4	was just doodling. 04:11:23 PM Q. Should have gone to law school. We 04:11:27 PM start at 10 o'clock in the morning and work 04:11:30 PM later. 04:11:33 PM
2 3 4	a checkmark is by claim 2. Why did you put your 04:08:38 PM initials and a check mark next to claim 2? 04:08:41 PM A. The issue of of using this 04:08:47 PM approach, the cytostatic drug approach, as a 04:08:55 PM you know, during my initial discussions with 04:09:02 PM	2 3 4 5	was just doodling. 04:11:23 PM Q. Should have gone to law school. We 04:11:27 PM start at 10 o'clock in the morning and work 04:11:30 PM later. 04:11:33 PM Claim 10 04:11:35 PM
2 3 4 5	a checkmark is by claim 2. Why did you put your 04:08:38 PM initials and a check mark next to claim 2? 04:08:41 PM A. The issue of — of using this 04:08:47 PM approach, the cytostatic drug approach, as a — 04:08:55 PM you know, during my initial discussions with 04:09:02 PM Dr. Kunz was — were centered around the — 04:09:04 PM	2 3 4 5 6	was just doodling. 04:11:23 PM Q. Should have gone to law school. We 04:11:27 PM start at 10 o'clock in the morning and work 04:11:30 PM later. 04:11:33 PM Claim 10 04:11:35 PM MR. MELORO: Some people start at 04:11:35 PM
2 3 4 5 6	a checkmark is by daim 2. Why did you put your 04:08:38 PM initials and a check mark next to daim 2? 04:08:41 PM A. The issue of — of using this 04:08:47 PM approach, the cytostatic drug approach, as a — 04:08:55 PM you know, during my initial discussions with 04:09:02 PM Dr. Kunz was — were centered around the — 04:09:04 PM using this approach to help prevent the 04:09:11 PM	2 3 4 5 6 7	was just doodling. 04:11:23 PM Q. Should have gone to law school. We 04:11:27 PM start at 10 o'clock in the morning and work 04:11:30 PM later. 04:11:33 PM Claim 10 04:11:35 PM MR. MELORO: Some people start at 04:11:35 PM 10:00 in the morning. 04:11:36 PM
2 3 4 5 6 7	a checkmark is by claim 2. Why did you put your 04:08:38 PM initials and a check mark next to claim 2? 04:08:41 PM A. The issue of — of using this 04:08:47 PM approach, the cytostatic drug approach, as a — 04:08:55 PM you know, during my initial discussions with 04:09:02 PM Dr. Kunz was — were centered around the — 04:09:04 PM using this approach to help prevent the 04:09:11 PM restenosis that occurs after angioplasty. 04:09:14 PM	2 3 4 5 6 7 8	was just doodling. 04:11:23 PM Q. Should have gone to law school. We 04:11:27 PM start at 10 o'clock in the morning and work 04:11:30 PM later. 04:11:33 PM Claim 10 04:11:35 PM MR. MELORO: Some people start at 04:11:35 PM 10:00 in the morning. 04:11:36 PM Q. (By Mr. Timmons) Claim claim 10, 04:11:42 PM
2 3 4 5 6 7 8	a checkmark is by daim 2. Why did you put your 04:08:38 PM initials and a check mark next to daim 2? 04:08:41 PM A. The issue of — of using this 04:08:47 PM approach, the cytostatic drug approach, as a — 04:08:55 PM you know, during my initial discussions with 04:09:02 PM Dr. Kunz was — were centered around the — 04:09:04 PM using this approach to help prevent the 04:09:11 PM	2 3 4 5 6 7 8 9	was just doodling. 04:11:23 PM Q. Should have gone to law school. We 04:11:27 PM start at 10 o'dock in the morning and work 04:11:30 PM later. 04:11:33 PM Claim 10 04:11:35 PM MR. MELORO: Some people start at 04:11:35 PM 10:00 in the morning. 04:11:36 PM Q. (By Mr. Timmons) Claim claim 10, 04:11:42 PM why did you circle cytostatic agent and put your 04:11:42 PM
2 3 4 5 6 7 8 9	a checkmark is by claim 2. Why did you put your 04:08:38 PM initials and a check mark next to claim 2? 04:08:41 PM A. The issue of — of using this 04:08:47 PM approach, the cytostatic drug approach, as a — 04:08:55 PM you know, during my initial discussions with 04:09:02 PM Dr. Kunz was — were centered around the — 04:09:04 PM using this approach to help prevent the 04:09:11 PM restenosis that occurs after angioplasty. 04:09:14 PM So I had a significant impact or a 04:09:18 PM	2 3 4 5 6 7 8 9	was just doodling. 04:11:23 PM Q. Should have gone to law school. We 04:11:27 PM start at 10 o'clock in the morning and work 04:11:30 PM later. 04:11:33 PM Claim 10 04:11:35 PM MR. MELORO: Some people start at 04:11:35 PM 10:00 in the morning. 04:11:36 PM Q. (By Mr. Timmons) Claim claim 10, 04:11:42 PM why did you circle cytostatic agent and put your 04:11:42 PM initials by that? 04:11:46 PM
2 3 4 5 6 7 8 9	a checkmark is by claim 2. Why did you put your 04:08:38 PM initials and a check mark next to claim 2? 04:08:41 PM A. The issue of — of using this 04:08:47 PM approach, the cytostatic drug approach, as a — 04:08:55 PM you know, during my initial discussions with 04:09:02 PM Dr. Kunz was — were centered around the — 04:09:04 PM using this approach to help prevent the 04:09:11 PM restenosis that occurs after angioplasty. 04:09:14 PM So I had a significant impact or a 04:09:18 PM significant component — or — that — for why 04:09:20 PM	2 3 4 5 6 7 8 9 10	was just doodling. 04:11:23 PM Q. Should have gone to law school. We 04:11:27 PM start at 10 o'clock in the morning and work 04:11:30 PM later. 04:11:33 PM Claim 10 04:11:35 PM MR. MELORO: Some people start at 04:11:35 PM 10:00 in the morning. 04:11:36 PM Q. (By Mr. Timmons) Claim claim 10, 04:11:42 PM why did you circle cytostatic agent and put your 04:11:42 PM initials by that? 04:11:46 PM A. Again and that I wasn't 04:11:48 PM
2 3 4 5 6 7 8 9 10	a checkmark is by daim 2. Why did you put your 04:08:38 PM initials and a check mark next to daim 2? 04:08:41 PM A. The issue of — of using this 04:08:47 PM approach, the cytostatic drug approach, as a — 04:08:55 PM you know, during my initial discussions with 04:09:02 PM Dr. Kunz was — were centered around the — using this approach to help prevent the vertical proach to help prevent the vertical process that occurs after angioplasty. 04:09:11 PM restenosis that occurs after angioplasty. 04:09:14 PM significant component — or — that — for why 04:09:20 PM that was included in this — in this — you 04:09:24 PM	2 3 4 5 6 7 8 9 10 11	was just doodling. 04:11:23 PM Q. Should have gone to law school. We 04:11:27 PM start at 10 o'clock in the morning and work 04:11:30 PM later. 04:11:33 PM Claim 10 04:11:35 PM MR. MELORO: Some people start at 04:11:35 PM 10:00 in the morning. 04:11:36 PM Q. (By Mr. Timmons) Claim claim 10, 04:11:42 PM why did you circle cytostatic agent and put your 04:11:42 PM initials by that? 04:11:46 PM A. Again and that I wasn't 04:11:48 PM attempting to you know, with this, I wasn't 04:11:50 PM
2 3 4 5 6 7 8 9 10 11 12	a checkmark is by daim 2. Why did you put your 04:08:38 PM initials and a check mark next to daim 2? 04:08:41 PM A. The issue of — of using this 04:08:47 PM approach, the cytostatic drug approach, as a — 04:08:55 PM you know, during my initial discussions with 04:09:02 PM Dr. Kunz was — were centered around the — 04:09:04 PM using this approach to help prevent the restenosis that occurs after angioplasty. 04:09:11 PM significant component — or — that — for why o4:09:20 PM that was included in this — in this — you 04:09:24 PM know, in that daim. 04:09:28 PM	2 3 4 5 6 7 8 9 10 11 12 13	was just doodling. 04:11:23 PM Q. Should have gone to law school. We 04:11:27 PM start at 10 o'clock in the morning and work 04:11:30 PM later. 04:11:33 PM Claim 10 04:11:35 PM MR. MELORO: Some people start at 04:11:35 PM 10:00 in the morning. 04:11:36 PM Q. (By Mr. Timmons) Claim claim 10, 04:11:42 PM why did you circle cytostatic agent and put your 04:11:42 PM initials by that? 04:11:46 PM A. Again and that I wasn't 04:11:48 PM attempting to you know, with this, I wasn't 04:11:50 PM attempting to say just these. So these are not 04:11:56 PM
2 3 4 5 6 7 8 9 10 11 12 13	a checkmark is by claim 2. Why did you put your 04:08:38 PM initials and a check mark next to claim 2? 04:08:41 PM A. The issue of — of using this 04:08:47 PM approach, the cytostatic drug approach, as a — 04:08:55 PM you know, during my initial discussions with 04:09:02 PM Dr. Kunz was — were centered around the — 04:09:04 PM using this approach to help prevent the 04:09:11 PM restenosis that occurs after angioplasty. 04:09:14 PM So I had a significant impact or a 04:09:18 PM significant component — or — that — for why 04:09:20 PM that was included in this — in this — you 04:09:24 PM know, in that claim. 04:09:28 PM Q. And claim 8, you also underline a 04:09:29 PM portion of that claim and put your initials by 04:09:31 PM	2 3 4 5 6 7 8 9 10 11 12 13	was just doodling. 04:11:23 PM Q. Should have gone to law school. We 04:11:27 PM start at 10 o'dock in the morning and work 04:11:30 PM later. 04:11:33 PM Claim 10 04:11:35 PM MR. MELORO: Some people start at 04:11:35 PM 10:00 in the morning. 04:11:36 PM Q. (By Mr. Timmons) Claim claim 10, 04:11:42 PM why did you circle cytostatic agent and put your 04:11:42 PM initials by that? 04:11:46 PM A. Again and that I wasn't 04:11:48 PM attempting to you know, with this, I wasn't 04:11:50 PM attempting to say just these. So these are not 04:11:56 PM exclusive. 04:11:59 PM
2 3 4 5 6 7 8 9 10 11 12 13	a checkmark is by daim 2. Why did you put your 04:08:38 PM initials and a check mark next to daim 2? 04:08:41 PM A. The issue of — of using this 04:08:47 PM approach, the cytostatic drug approach, as a — 04:08:55 PM you know, during my initial discussions with 04:09:02 PM Dr. Kunz was — were centered around the — 04:09:04 PM using this approach to help prevent the 04:09:11 PM restenosis that occurs after angioplasty. 04:09:14 PM So I had a significant impact or a 04:09:18 PM significant component — or — that — for why 04:09:20 PM that was included in this — in this — you 04:09:24 PM know, in that daim. 04:09:28 PM Q. And daim 8, you also underline a 04:09:31 PM portion of that daim and put your initials by 04:09:33 PM it. Could you tell me why you did that? 04:09:33 PM	2 3 4 5 6 7 8 9 10 11 12 13 14	was just doodling. 04:11:23 PM Q. Should have gone to law school. We 04:11:27 PM start at 10 o'clock in the morning and work 04:11:30 PM later. 04:11:33 PM Claim 10 04:11:35 PM MR. MELORO: Some people start at 04:11:35 PM 10:00 in the morning. 04:11:36 PM Q. (By Mr. Timmons) Claim claim 10, 04:11:42 PM why did you circle cytostatic agent and put your 04:11:42 PM initials by that? 04:11:46 PM A. Again and that I wasn't 04:11:48 PM attempting to you know, with this, I wasn't 04:11:50 PM attempting to say just these. So these are not 04:11:59 PM Q. Yeah. 04:12:01 PM
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		Page 181		Page 183
	1	opposed to a cytostatic agent, although they 04:12:39 PM	1	THE WITNESS: No. 04:41:31 PM
	2	those terms can almost be used synonymously. 04:12:42 PM	2	Q. (By Mr. Timmons) Okay. When you - 04:41:32 PM
	3	Q. Okay. Why why would a 04:12:46 PM	3 b	efore you sent out this fax to Ms. Embretson, 04:41:34 PM
	4	cytoskeletal inhibitor and cytostatic agent - 04:12:47 PM	4 di	id you run this fax past your attorneys? 04:41:37 PM
	5	why could those terms almost be used 04:12:47 PM	5	A. No. 04:41:45 PM
	6	synonymously? 04:12:52 PM	6	Q. Okay. Why not? 04:41:45 PM
	7	A. I'm not a a clinical chemist or 04:12:54 PM	7	A. I don't know why I didn't. 04:41:53 PM
	8	pharmacologist, but in in many instances, a 04:12:56 PM	8	Q. Okay. Were you still under the 04:41:56 PM
	9	cytostatic drug works by inhibiting cytoskeletal 04:12:59 PM	9 in	structions that you were to sign what NeoRx 04:41:59 PM
	10	components; not always, but in many times, 04:13:06 PM	10 se	ends you and — and just send it on back to 04:42:04 PM
	11	that's that's the mechanism of action. 04:13:10 PM	11 th	nem? 04:42:07 PM
	12	MR. TIMMONS: Why don't we take a 04:13:15 PM	12	MR. MELORO: Objection to form. 04:42:08 PM
	13	a break now. 04:13:16 PM	13	MR. NODINE: Objection to form, 04:42:09 PM
	14	THE VIDEOGRAPHER: We are going off 04:13:19 PM	14 ot	bjection to the recharacterization of the 04:42:10 PM
	15	the record, 4:13 p.m. 04:13:20 PM	15 te	estimony. 04:42:13 PM
	16	(Whereupon, a discussion ensued off the record.) 04:13:23 PM	16	THE WITNESS: In 2003, I don't 04:42:17 PM
	17	THE VIDEOGRAPHER: Going back on the 04:39:58 PM	17 re	ecall, you know, I I can't recall what my 04:42:25 PM
	18	record, 4:39 p.m. 04:39:59 PM	18 th	nought process was as to which which way I 04:42:28 PM
	19	Q. (By Mr. Timmons) Dr. Anderson, I 04:40:06 PM		ent. I just filled it out and sent it back. 04:42:35 PM
	20	want to go back to the 447 patent and Anderson 04:40:07 PM	20	Q. (By Mr. Timmons) Okay. And in this 04:42:42 PM
	21	13, which is your fax in response to 04:40:10 PM	21 ca	ase, you disagreed with Ms. Embretson as to 04:42:44 PM
	22	Ms. Embretson. The the materials that 04:40:12 PM		hether or not you should be taken off the 447 04:42:49 PM
	23	Ms. Embretson sent you and that you were 04:40:18 PM		atent, correct? 04:42:51 PM
	24	responding to with this fax, did they come to 04:40:21 PM	24	A. Correct. 04:42:53 PM
	25	your home, or did they come to the office; do 04:40:25 PM	25	Q. Okay. 04:42:53 PM
_				
		Page 182		Page 184
	1	you remember? 04:40:29 PM	1	MR. TIMMONS: Tom, this is a shot in 04:43:14 PM
	2	A. I don't remember. 04:40:29 PM	2 the	e dark, but if — if, for any reason, Boston 04:43:15 PM
	3	Q. Okay. Did you again, without the 04:40:32 PM	3 Sci	ientific has the materials that — well, as a 04:43:18 PM
	4	substance between you and your attorney, did you 04:40:36 PM	4 ma	etter of fact, there's a BSN production number 04:43:21 PM
	5	bring the attention — to the attention of your 04:40:42 PM	5 acr	ross the bottom of this, which I assume is one 04:43:24 PM
	6	attorneys Ms. — Ms. Embretson's communication 04:40:46 PM		Boston Scientific's productions. 04:43:26 PM
	7	to you in January of 2003? 04:40:49 PM	7	If Boston Scientific has, in their 04:43:32 PM
	8	MR. NODINE: Object, insofar 04:40:54 PM	-	ssession, a copy of the communication from 04:43:32 PM
	9	insofar as it calls for disclosing 04:40:55 PM		s. Embretson to Dr. Anderson, I I'd request 04:43:36 PM
	10	attorney-client communications. 04:40:59 PM		copy of that, please. 04:43:41 PM
	11	Otherwise, if you can answer the 04:41:02 PM	11	MR. MELORO: To — to my knowledge, 04:43:43 PM
	12	question without doing so, you may answer. 04:41:02 PM		e don't, but I'il take it under advisement. 04:43:44 PM
	13	Further, object to the form, vague 04:41:07 PM	13	MR. TIMMONS: Thank you very much. 04:43:48 PM
	14	and ambiguous. 04:41:08 PM	14	Q. (By Mr. Timmons) Okay. 04:43:49 PM
	15	MR. MELORO: You're asking whether he 04:41:12 PM		. Anderson, could you turn back to Anderson 04:43:49 PM
	16	talked to his attorneys at about the time? 04:41:12 PM		hibit 8, which was the agreement between NeoRx 04:43:57 PM
	17	MR. TIMMONS: No, no. I thought I 04:41:15 PM		d the UAB Research Foundation. It's got a 04:44:02 PM
	18	had a perfectly fine question. 04:41:16 PM		ver letter on it, July 16, 1991. 04:44:17 PM
	19	Q. (By Mr. Timmons) Which was, the 04:41:17 PM	19	A. Okay. 04:44:22 PM
	20	materials you received from Ms. Embretson in 04:41:18 PM	20	Q. Okay. 04:44:22 PM
	21	January 2003, did you bring those to the 04:41:20 PM	21	A. Got it. 04:44:23 PM
	22	attention of your attorneys at UAB Research 04:41:22 PM	22	Q. If you would turn to page 7 of that 04:44:26 PM
	23	Foundation? 04:41:27 PM	_	reement, please. 04:44:29 PM
	24	MR. NODINE: Objection to the form of 04:41:28 PM	24	A. Okay. 04:44:39 PM
				0 7

46 (Pages 181 to 184)

04:44:42 PM

the question.

25

Q. 7 — paragraph 7.2 talks about any

04:41:29 PM

	1	Page 193 both? 04:55:14 PM		Page 195
	2		1	Exhibit 4, which is U.S. patent number 04:58:37 PM
	3		,2	, , , , , , , , , , , , , , , , , , ,
	4		3	you would pass the extra on to your counsel, 04:58:48 PM
	5		4	please. 04:58:51 PM
	6		5	Okay. Have you seen this patent 04:58:55 PM
	7	- ,	6	before? 04:58:56 PM
	8	therapeutic agent in a stent for a — to inhibit 04:55:43 PM	7	A. Only, again, if this would have 04:58:57 PM
		restenosis was the the crux of the 04:55:49 PM	8	likely come up on my list during my Internet 04:59:08 PM
	9	discussions between Dr. Kunz and myself or was a 04:55:56 PM	9	search, but I don't recall specifically pulling 04:59:14 PM
	10	component of discussions between Dr. Kunz and 04:56:00 PM	10	this individual one up and reading it. 04:59:18 PM
	11	myself. 04:56:04 PM	11	Q. Okay. And you are not a named 04:59:21 PM
	12	Q. And how about daim 55? 04:56:05 PM	12	inventor of this 928 patent, at least on its 04:59:24 PM
	13	A. 55, I would say the same thing, that 04:56:10 PM	13	face, correct? 04:59:28 PM
	14	the — the scientific approach of a sustained 04:56:13 PM	14	A. Correct. 04:59:29 PM
	15	release form of a cytostatic agent to prevent 04:56:17 PM	15	Q. Okay. And if you see — again, under 04:59:30 PM
	16	smooth muscle cell proliferation and migration 04:56:22 PM	16	related U.S. application data, the application 04:59:32 PM
	17	and contraction were altogether similar to to 04:56:25 PM	17	which led to the 928 patent is a continuation of 04:59:34 PM
	18	the scientific information that we worked out 04:56:30 PM	18	application number 08/389,712. Do you see 04:59:37 PM
	19	together in our collaborations. 04:56:35 PM	19	that? 04:59:43 PM
	20	Q. And just to go back to something that 04:56:38 PM	20	A. Yes. 04:59:44 PM
	21	we we talked about before, in your work with 04:56:40 PM	21	Q. And that 712 application was the one 04:59:44 PM
	22	NeoRx, you did not use an intravascular stent as 04:56:43 PM	22	that you were told in December 1996 that you 04:59:45 PM
	23	the method for delivery of a cytostatic agent to 04:56:48 PM	23	were going to be added to as an inventor, 04:59:48 PM
	24	the location of vascular trauma, correct? 04:56:52 PM	24	correct? 04:59:50 PM
	25	MR. NODINE: Objection, leading, and 04:56:55 PM	25	A. Yes. 04:59:50 PM
				
		Page 194		Page 196
	1	Page 194 recharacterization of the prior testimony. 04:56:56 PM	1	Page 196 Q. Okay. If you would turn again to 04:59:50 PM
	2		ľ	Q. Okay. If you would turn again to 04:59:50 PM
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1 1 1 1 1 1 1 1 2 2	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 19 19 19 19 19 19 19 19 19 19 19 19	recharacterization of the prior testimony. THE WITNESS: In my working with NeoRx, we never did any studies with stents. Q. (By Mr. Timmons) Okay. Do you O4:57:03 PM O4:57:03 PM O4:57:14 PM O4:57:22 PM U.S. application number 6 U.S. patent number O4:57:32 PM MR. MELORO: Objection. MR. NODINE: Objection, insofar as it O4:57:37 PM MR. NODINE: Objection, insofar as it O4:57:39 PM Calls for a legal conclusion. O4:57:39 PM But answer, if you if you know. O4:57:41 PM THE WITNESS: That's this? O4:57:43 PM Q. (By Mr. Timmons) That's the patent O4:57:44 PM we just went over, claims 18 and 55. A. Many of this most of the O4:57:50 PM components and the ideas expressed in these O4:57:58 PM to the ideas that Dr. Kunz and I developed Q. And as the 609 patent stands today, O4:58:06 PM	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q. Okay. If you would turn again to 04:59:50 PM column 65 of this patent. And maybe we can cut 04:59:54 PM right to — if you could look at claims 1, 2, 05:00:03 PM and 8, and let me know whether or not you had 05:00:06 PM any input as to the invention of those claims. 05:00:09 PM A. 1, 2, and — 05:00:38 PM Q. 8. 05:00:45 PM A. 8. 05:00:46 PM In reading through 1, 2, and 8, the 05:01:04 PM approaches, the — the — the scientific 05:01:08 PM methodologies proposed here are consistent with 05:01:14 PM the same scientific methodologies that Dr. Kunz 05:01:20 PM and I discussed and — and, you know, agreed 05:01:24 PM upon for an effective way to — to treat 05:01:35 PM Q. Do you consider yourself a — an 05:01:38 PM inventor of the claims of the 928 patent? 05:01:38 PM MR. NODINE: Object, insofar as it 05:01:44 PM calls for a legal conclusion. 05:01:44 PM
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1 1 1 1 1 1 1 2 2 2 2 2	2 3 4 5 6 7 8 9 10 11 12 13 14 5 16 7 8 9 10 11 2 13 14 5 16 17 8 9 10 11 2 13	recharacterization of the prior testimony. THE WITNESS: In my working with NeoRx, we never did any studies with stents. Q. (By Mr. Timmons) Okay. Do you Consider yourself an inventor of the claims of U.S. application number 6 U.S. patent number O4:57:22 PM W.S. application number 6 U.S. patent number O4:57:32 PM MR. MELORO: Objection. MR. NODINE: Objection, insofar as it O4:57:37 PM Calls for a legal conclusion. But answer, if you if you know. O4:57:41 PM THE WITNESS: That's this? O4:57:43 PM Q. (By Mr. Timmons) That's the patent We just went over, claims 18 and 55. A. Many of this most of the O4:57:44 PM Scientific input and the or the scientific Components and the ideas expressed in these Characterization 04:57:55 PM Components and the ideas expressed in these O4:57:55 PM Components and the ideas expressed in these O4:57:58 PM O4:58:02 PM O4:58:07 PM THE WITNESS: That's thing of the only inventor is Dr. Kunz, who was an of the only inventor is Dr. Kunz, who was an of the only inventor is Dr. Kunz, who was an of the only inventor is Dr. Kunz, who was an of the only inventor is Dr. Kunz, who was an of the only inventor is Dr. Kunz, who was an of the only inventor is Dr. Kunz, who was an of the only inventor is Dr. Kunz, who was an of the only inventor is Dr. Kunz, who was an only inventor is Dr. Kunz, who	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Q. Okay. If you would turn again to 04:59:50 PM column 65 of this patent. And maybe we can cut 04:59:54 PM right to — if you could look at claims 1, 2, 05:00:03 PM and 8, and let me know whether or not you had 05:00:06 PM any input as to the invention of those claims. 05:00:09 PM A. 1, 2, and — 05:00:38 PM Q. 8. 05:00:45 PM A. 8. 05:00:45 PM A. 8. 05:00:46 PM In reading through 1, 2, and 8, the 05:01:04 PM approaches, the — the — the scientific 05:01:08 PM methodologies proposed here are consistent with 05:01:14 PM the same scientific methodologies that Dr. Kunz 05:01:20 PM and I discussed and — and, you know, agreed 05:01:24 PM upon for an effective way to — to treat 05:01:30 PM restenosis. 05:01:35 PM Q. Do you consider yourself a — an 05:01:36 PM inventor of the claims of the 928 patent? 05:01:38 PM MR. NODINE: Object, insofar as it 05:01:44 PM and I developing these ideas. 05:01:54 PM OS:01:52 PM into developing these ideas. 05:01:59 PM OS:01:59 PM

	Page 197		Page 199
1	that? 05:02:08 PM	1	rate? 05:05:02 PM
2	A. Yes. 05:02:08 PM	2	A. No. 05:05:04 PM
3	Q. And if they are both NeoRx employees, 05:02:08 PM	3	Q. Is this the only consulting agreement 05:05:05 PM
4	the titles to the invention remains in NeoRx, 05:02:11 PM	4	that you've entered into in the recent past? 05:05:07 PM
5	correct? 05:02:15 PM	5	A. No. 05:05:12 PM
6	MR. NODINE: Object, insofar as it 05:02:16 PM	6	Q. What other consulting agreements have 05:05:13 PM
7	calls for a legal conclusion or interpretation 05:02:17 PM	7	you entered into in the last, let's say, three 05:05:14 PM
8	of the contract. 05:02:19 PM	8	years? 05:05:16 PM
9	But you may answer. 05:02:21 PM	9	A. I have a consulting agreement with 05:05:19 PM
10	THE WITNESS: I would assume so, yes. 05:02:23 PM	10	Merck. 05:05:22 PM
11	MR. TIMMONS: Okay. Let's mark as 05:02:28 PM	11	Q. Anyone else? 05:05:28 PM
12	Anderson Exhibit 15 a letter from Mr. Nodine. 05:02:41 PM	12	A. And not within the last three 05:05:29 PM
13	MR. NODINE: Yes, it's Nodine 05:02:51 PM	-13	years. 05:05:34 PM
14	(pronunciation). 05:02:52 PM	14	Q. Okay. Is there an hourly rate by 05:05:35 PM
15	MR. TIMMONS: Nodine, sorry. Once 05:02:53 PM	15	which you're paid by Merck under that consulting 05:05:36 PM
16	you get Larry, you forget about your last 05:02:54 PM	16	agreement? 05:05:42 PM
17	name to Mr. Meloro dated October 8th, 2004, 05:02:57 PM	17	A. No. 05:05:43 PM
18	and an attached letter from Mr. Meloro to 05:03:01 PM	18	Q. Have you ever had an hourly rate 05:05:43 PM
19	Dr. Anderson dated April 30th, 2004, UA I'm 05:03:04 PM	19	which you're paid under the consulting 05:05:45 PM
20	sorry, UAB 1089 to 1091. 05:03:14 PM	20	agreement under a consulting agreement? 05:05:46 PM
21	(WHEREUPON, Anderson Exhibit 15 was marked for 05:03:26 PM	21	A. No. 05:05:48 PM
22	identification.) 05:03:26 PM	22	Q. Okay. How did you come up with \$300 05:05:50 PM
23	Q. (By Mr. Timmons) Let's let's 05:03:26 PM	23	per hour for the consulting services? 05:05:52 PM
24	start with the second letter first. Take a look 05:03:29 PM	24	A. As I when I just when we 05:06:00 PM
25	at the letter from Mr. Meloro to yourself dated 05:03:33 PM	. 25	talked on the — when Mr. Meloro and I spoke on 05:06:06 PM
_			

			Page 198
1	April 30th, 2004. Do you recognize that		-
2	letter? 05:	03:43 I	PM
3		:03:43	
4	42	5:03:4	3 PM
5	A. It's a a memo written by	05:	:03:52 PM
6	Dr. Meloro to me.		:55 PM
7	Q. Does it relate to a consulting	05:	04:09 PM
8	agreement that you would have with Bos	ton	05:04:10 PM
9	Scientific? 05	:04:12	PM
10	A. Yes. 05	04:14	PM
11	Q. Okay. How who approached y	ou .	05:04:15 PM
12	regarding entering into a consulting agree	ement	05:04:21 PM
13	with Boston Scientific?	05:04	:25 PM
14	A. Mr. Meloro called me.	05:0	4:28 PM
15	Q. How long before April 30th, 2004	did	05:04:34 PM
16	he call you?	5:04:36	5 PM
17	A. I can't recall exactly, but it was	05:0	04:41 PM
18	sometime within the a couple months,	you	05:04:45 PM
19	know, within - within a couple of month		05:04:48 PM
20	period. 05:	04:50	PM
21	Q. Okay. And the third paragraph of	lown	05:04:51 PM
22	says you will be paid \$300 per hour for yo	our	05:04:55 PM
23	consulting services. Do you see that?	(5:04:58 PM
24	A. Yes. 05:	05:01	PM
25	Q. Do you have a normal consulting	•	05:05:01 PM

	Page 200
1	the phone, I mentioned to him that most of my 05:06:08 PM
2	consulting was on a on a case basis, as a 05:06:10 PM
3	pathologist, where I would review glass slides 05:06:15 PM
4	of of animal tissues. 05:06:21 PM
5	And I told him that I usually charged 05:06:24 PM
6	\$1,000 a day just to do — to — basically to 05:06:27 PM
7	start the consulting, to — to look at the 05:06:35 PM
8	slides and come to an opinion. And if it was 05:06:38 PM
9	took longer than a day's worth of work, then I 05:06:42 PM
10	would — would charge additionally. 05:06:46 PM
11	And I I can't remember our exact 05:06:50 PM
12	conversation, but it at at some point, it 05:06:52 PM
13	went from my normal paradigm of – of looking at 05:06:57 PM
14	glass slides to agreeing to a \$300 per hour fee. 05:07:02 PM
15	Q. Okay. Is it your signature on the 05:07:08 PM
16	second page of that consulting agreement? 05:07:11 PM
17	A. Yes. 05:07:13 PM
18	Q. Okay. And it's not dated, but did 05:07:14 PM
19	you agree did you sign that close to or or 05:07:17 PM
20	about April 30th, 2004? 05:07:21 PM
21	A. I believe so, yes. 05:07:24 PM
22	Q. Before you signed this, did you 05:07:27 PM
23	without I don't again, I don't want to get 05:07:32 PM
24	the substance, did you consult with your 05:07:34 PM
25	·
23	attorneys at UAB Research Foundation about 05:07:35 PM



NEORX

NeoRx Corporation 410 West Harrison Scattle, Washington 98115

CAN TESCESI CAN TESCESI CAN TESCESI CAN TESCESI

July 16, 1991

Mr. Peter J. Newman
Program Manager

UAB Research Foundation
The University of Alabama
at Birmingham
125 Mortimer Jordan Hall
1825 University Boulevard
UAB Station
Birmingham, Alabama 35294-2010

Re: Executed Option Agreement - Monoclonal Antibody Conjugates for Coronary Artery Angioplasty Restensis

Dear Peter:

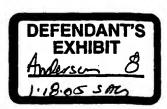
Enclosed please find one fully executed and initialed duplicate original of the above-identified Agreement. Thanks for your cooperation in negotiating a mutually beneficial contract.

Very truly yours,

Debra K. Leith, J.D., Ph.D.

Patent Counsel

Enclosure: Agreement



AGREEMENT

THIS AGREEMENT is entered into as of June 1, 1991, by and between NEORX CORPORATION ("NeoRx"), a Washington corporation whose principal place of business is located at 410 West Harrison Street, Seattle, Washington 98119, and THE UAB RESEARCH FOUNDATION ("UABRF"), located at 1825 University Boulevard, Birmingham, Alabama 35294-2010.

WHEREAS, NeoRx is engaged in research and development of monoclonal antibody-based pharmaceutical products; and

WHEREAS, NeoRx desires to develop certain antibody-based products related to vascular trauma in general, and coronary artery angioplasty restenosis in particular; and

WHEREAS, UABRF is willing to grant NeoRx exclusive rights in any technology developed according to the terms and conditions of this agreement ("the Agreement");

NOW, THEREFORE, in consideration of the mutual representations, warranties and promises herein contained, the parties agree as follows:

ARTICLE I DEFINITIONS

- 1.1 "Technology" shall mean any present and future patent applications ("Patents") and confidential information, including know-how, trade secrets or other data ("Know-How"), related to vascular trauma in general, and coronary artery angioplasty restenosis in particular, that is owned or controlled (in the sense of being able to grant licenses) by UABRF and that relates specifically to work conducted by Dr. Peter Anderson involving the use of conjugates.
- 1.2 "Conjugate" shall mean a molecule capable of targeting human coronary artery smooth muscle cells and a cytotoxic agent that are joined, directly or indirectly, by at least one covalent bond.
- 1.3 "Post-Angioplasty Restenosis" shall mean proliferation of vascular smooth muscle cells in response to trauma associated with angioplasty of coronary arteries in human patients.

- 1.4 "Product(s)" shall mean each NeoRx product containing at least one Conjugate.
 - 1.5 "Field of Use" shall mean any use.
- 1.6 "NeoRx" shall mean NeoRx Corporation, any person, corporation, firm, partnership, or other entity in which NeoRx owns or controls, either directly or indirectly, at least 50% of the voting stock thereof, and any legal representative, successor or assignee of NeoRx.
 - 1.7 "Net Sales" shall mean the invoice amount received from commercial sales to independent, unrelated parties in bona fide arms-length transactions of the Product(s), less the following deductions:
 - (i) Trade and/or quantity discounts actually allowed and taken in such amounts as are customary in the trade;
 - (ii) Sales and other excise taxes and duties paid, absorbed, or allowed;
 - (iii) Amounts billed to cover transportation costs;
 - (iv) Actual cost of transportation charges, if transportation charges are not separately billed; and
 - (v) Amounts repaid or credited by reason of rejection, defects, or return, or because of retroactive price reductions.
 - 1.8 "Phase III Clinical Trials" shall mean multicenter human trials conducted under provisions of 21 CFR Part 312, Subpart A, Section 312.1(a)(2) relating to Form FD 1571, Item 1C, with respect to the use of Product(s) in vivo in humans.
 - 1.9 "Product License Application" shall mean an initial product license application covering a Product filed with the Food and Drug Administration, and any amendments thereto.

ARTICLE II LICENSE OPTION

2.1 UABRF hereby grants to NeoRx, subject to the terms and conditions herein, an irrevocable option ("the Option") for an exclusive world-wide license in the Field of Use to develop Technology and to make, have made, use, sell, and have sold Product(s) for the term of this Agreement. Said license shall grant to NeoRx the right to grant sublicenses no greater in scope

than the license granted herein. Any sublicensees shall be subject to the provisions of this Agreement.

- 2.2 The Option shall remain exercisable by NeoRx until March 31, 1992. NeoRx shall exercise the Option by paying UABRF the license fee described in Section 4.1, below.
- 2.3 During the term of the Option, NeoRx shall pay for filing and prosecution of U.S. patent application(s) covering Joint Invention(s) (as defined in Section 7.2(c), below). In addition, NeoRx will make payments to UABRF for a collaborative study involving a pig model system, so long as the results of preliminary experiments warrant initiation and continuation of such collaborative study.
- 2.4 If NeoRx elects not to exercise the Option, NeoRx and UABRF shall negotiate in good faith any expenses and responsibilities related to further protection and transfer of Joint Inventions and any portion of Technology that is jointly developed by the parties.

ARTICLE III DEVELOPMENT BY NEORX

- 3.1 NeoRx, at its own cost and expense, shall expend reasonable efforts and resources to carry out the development and marketing of Product(s) to the point of a Product License Application with the Food and Drug Administration within five years of the effective date of this Agreement, unless this deadline is extended by mutual agreement of the parties. UABRF shall not unreasonably withhold approval of any request by NeoRx to extend this period, if such request is supported by a reasonable showing by NeoRx of due diligence toward bringing the Product(s) to commercialization. "Due diligence" shall include any reasonable and diligent application for approval required by any government agency within the United States.
- # 3.2 NeoRx agrees to use UABRF for the conduct of requisite clinical trials of the Product(s), wherever reasonably practicable.
- 3.3 After bringing Product(s) to the point of commercialization, NeoRx agrees to use reasonable efforts to keep Product(s) reasonably available to the public during the term of this Agreement.

ARTICLE IV ROYALTIES AND PAYMENTS

- 4.1 The Option (described in Article II, above) granted to NeoRx is exercisable by notification and immediate payment to UABRF of a \$20,000 license fee. Thereafter, NeoRx shall make the following non-refundable advance payments with respect to each Product:
 - (i) \$50,000 upon initiation of Phase III Clinical Trials with the first Product; and
 - (ii) \$50,000 upon approval by the Food and Drug Administration of each Product License Application, but no more than one such payment will be made for each Product License Application as defined herein.
- 4.2 If a Patent covering the Technology or a portion thereof, a Conjugate and/or related methods issues, NeoRx shall pay a royalty rate of one percent (1%) on Net Sales of Products by NeoRx and its sublicensees for the life of the last-to-expire patent. If multiple issued Patents cover the Product(s), the total royalty rate on Net Sales of Products under this Agreement shall not exceed 1%. If a Patent does not issue, NeoRx shall pay UABRF a royalty rate of one percent (1%) on Net Sales of Product by NeoRx and its sublicensees for a period of 10 years from the date of FDA approval. If cumulative annual royalties paid or owing at the end of the current calendar year do not exceed \$10,000, NeoRx shall pay UABRF the difference between \$10,000 and cumulative annual royalties paid or accrued for that calendar year. Such payment shall be made within ninety (90) days after December 31.
- 4.3 NeoRx agrees to submit to UABRF within ninety (90) days after each calendar half year ending June 30 and December 31, reports setting forth for the preceding six month period the amount of Product(s) sold by NeoRx and its sublicensees.
- 4.4 NeoRx and/or its sublicensees shall pay all necessary expenses for domestic and foreign commercialization of Product(s), and such expenses shall not be deducted from any payments due UABRF as provided herein.
- 4.5 All royalties shall be paid to UABRF in lawful money of the United States. NeoRx shall be responsible for compliance with all currency exchange laws and regulations.

ARTICLE V REPORTS AND RECORDS

- 5.1 NeoRx shall keep and shall cause its sublicensees to keep accurate and complete records of Product(s) made, used, sold, or otherwise disposed of under this Agreement appropriate to determine the amount of royalty fee due hereunder. Such records shall be retained for at least three years following a particular reporting period. Together with each six month royalty payment, NeoRx shall provide UABRF with a written report with respect to the six months for which royalties are paid. Such reports shall state the Net Sales of all of the Products which are both manufactured by and sold or otherwise distributed by NeoRx (and its sublicensees), and shall specify in reasonable detail the manner by which the royalty payment for the six months period was calculated.
- 5.2 NeoRx (and its sublicensees) shall keep and maintain true and complete books and records pertaining to its distribution and sale of the Product(s) in sufficient detail to enable an independent certified public accountant, selected by UABRF, to determine with accuracy whether NeoRx has fully paid all sums payable to UABRF pursuant to this Agreement. NeoRx (and its sublicensees) shall maintain its books and records for at least three years following the date of a particular payment. NeoRx (and its sublicensees) shall make such books and records, as well as appropriate personnel, available at reasonable times during regular business hours for inspection and inquiry (subject to customary confidentiality agreements) by UABRF's designated certified public accountant. In addition, NeoRx (and its sublicensees) shall supply UABRF's certified public accountant with all details and supporting data reasonably necessary to verify the accuracy and completeness of all reports and payments required by this Agreement.

ARTICLE VI PROPRIETARY AND CONFIDENTIAL INFORMATION

- 6.1 "Proprietary and Confidential Information" as herein used, means any and all information and materials concerning any aspect of each respective party not generally known to persons but those associated with that party. This shall include, but not be limited to, clinical data, concepts, processes and techniques, trade secrets, business strategies (whether or not implemented) and financial information.
- 6.2 Proprietary and Confidential Information is disclosed in the strictest confidence and shall be considered confidential and proprietary information of the disclosing party. Any Proprietary and Confidential Information that is disclosed in writing or orally between the parties shall be maintained as confidential for a period of five years from the date of this Agreement.

- 6.3 Except as authorized by the disclosing party, the receiving party will not duplicate, transfer or disclose nor allow any other person to duplicate, transfer or disclose any of the Proprietary and Confidential Information. The receiving party will safeguard all Proprietary and Confidential Information at all times so that it is not exposed to or used by unauthorized persons and will exercise at least the same degree of care used to protect its own confidential information. The receiving party shall not use Proprietary and Confidential Information without the prior written consent of the disclosing party.
- 6.4 The restrictive obligations set forth above shall not apply to the disclosure or use of any information which: 1) is or later-becomes publicly known under circumstances involving no breach of this Agreement by the receiving party; 2) is already known to the receiving party at the time of receipt of the information; 3) is lawfully made available by a third party; or 4) is independently developed by an employee of the receiving party who has not been privy to the Confidential Information provided.
- 6.5 Except as explicitly set forth herein, both parties understand that no patent rights or licenses are granted by this Agreement. The disclosure of Proprietary and Confidential Information hereunder shall not result in any obligation for either party to grant any party any rights in and to the patent rights or other confidential information of the other party, and that no other obligations of any kind are assumed by or implied against either party, except for those stated herein.
- 6.6 UABRF agrees to submit to NeoRx for review, at least thirty (30) days prior to oral publication or submission for written publication to any third party not bound by proprietary information restrictions comparable to those contained herein, the intended oral or written publication containing confidential information of NeoRx or information that is jointly developed by the parties. UABRF agrees that upon reasonable request of NeoRx, and to the extent reasonably necessary to protect NeoRx's patent or other legal rights, UABRF will delay from publishing such results of its investigation(s).

ARTICLE VII PATENTS AND LITIGATION

7.1 "Inventions" shall mean all discoveries, concepts and ideas, whether patentable or not, which arise from or are directly related to Proprietary and Confidential Information or property, including but not limited to articles, processes, methods, formulas, systems and techniques, as well as improvements thereof and know-how related thereto.

- 7.2 Any Invention made in the performance of this Agreement and that relates to Technology or Product(s) shall be subject to the following terms and conditions:
 - (a) Where the Invention is made solely by UABRF or by employees and/or contractors of UABRF, title to such Invention shall remain in UABRF, and NeoRx and UABRF agree to negotiate in good faith a license agreement whereby NeoRx would be granted an exclusive, world-wide, irrevocable license to make, have made, use, sell, have sold and sublicense such Invention for the longer of 1) the term of any patent that may issue thereon, or 2) a period of ten (10) years from the date of the Agreement. Such license agreement shall not conflict with and shall be subject to laws and regulations of, and agreements with, the United States Government and public and private funding organizations, including NIH guidelines. If negotiations between NeoRx and UABRF do not result in a license agreement, UABRF will not license the Invention to another party on more favorable terms than offered to NeoRx.
 - (b) Where the Invention is made solely by employees or contractors of NeoRx, title to such Invention shall remain in NeoRx;
 - (c) Where the Invention is made jointly by employees or contractors of NeoRx and of UABRF ("Joint Invention"), title shall rest in both NeoRx and UABRF.

In the case of Inventions described in Section 7(a) only, UABRF has the option to prepare and file world-wide patent applications for Inventions at its sole discretion. In the case of Inventions described in Section 7(b) only, NeoRx has the option to prepare and file world-wide patent applications for Inventions at its sole discretion. In the case of Joint Inventions described in Section 7(c) only, NeoRx will prepare and file a United States patent application(s) for any Joint Invention. Preparation, filing, prosecution and maintenance of corresponding foreign patent applications will be at the sole discretion of NeoRx. UABRF shall codperate in expediting preparation, filing and prosecution of such patent applications.

The respective costs of such patent filings will be borne by: UABRF wholly under Section 7(a); and NeoRx wholly under Sections 7(b) and 7(c).

As used herein, the terms "inventor," "Invention," "joint inventors" and "joint invention" are defined to be consistent with those definitions established and set forth in Title 35 U.S.C. and case law pertaining thereto.

7.3 If any patent application submitted by NeoRx matures into an issued Patent and covers the Product(s) per se, UABRF shall notify NeoRx promptly in writing of any infringement of such Patent which becomes known to UABRF. NeoRx has no obligation to bring or prosecute any legal action against third parties for infringement of a Patent; however, NeoRx and UABRF may mutually agree to pursue such legal action on terms to be negotiated in good faith by NeoRx and UABRF.

ARTICLE VIII INDEMNIFICATION

- 8.1 NeoRx agrees to indemnify UABRF and hold it harmless from and against suits, claims and demands whatsoever for injuries to or death of any person, damage to or loss of property alleged to have arisen out of, in connection with, or incidental to NeoRx's performance of the terms of this Agreement. In respect of NeoRx's obligation to indemnify, NeoRx shall defend suits, claims and demands brought against UABRF. NeoRx's obligation to defend shall arise upon notification to NeoRx and/or UABRF of such claim.
- 8.2 In respect of NeoRx's obligations set forth in Section 8.1 above, NeoRx agrees to pay, liquidate, discharge and satisfy any and all judgments, awards or expenses which may be rendered against or incurred by UABRF, including, but not limited to, all costs of suit, reasonable attorneys' fees and reasonable expenses in connection therewith, except to the extent that such judgment, award or expense is attributable, in whole or in part, to the negligence of UABRF.

ARTICLE IX TERMINATION

9.1 This Agreement and the license granted in Article II shall have a term commencing on the effective date, unless terminated sooner in accordance with the provisions of this Agreement. Upon termination of the Agreement, all Proprietary and Confidential Information and materials in the possession of the receiving party shall be returned to the disclosing party, except that one copy of written information may be retained by the receiving party in a limited access file. If NeoRx does not file a Product License Application within five years of the effective date of the Agreement, and if this deadline is not extended by mutual agreement of the parties (see Section 3.1), the Agreement will terminate. Unless terminated sooner in accordance with the provisions of this Agreement, this Agreement shall remain in force for the longer of: (a) the last-to-expire Patent or (b) 10 years from the effective date of this Agreement.

9.2 UABRF may terminate this Agreement if NeoRx is in breach because of its failure to pay royalties due and owing or its failure to submit a royalty report as prescribed herein. In such case, UABRF shall provide written notice to NeoRx, and NeoRx shall have 30 days from receipt of the written notice to cure the breach. If the breach is not cured within such 30 day period, UABRF may give notice of termination of the agreement. In addition to UABRF's right to terminate, both parties shall have all legal and equitable remedies available to enforce the terms and conditions of this Agreement.

ARTICLE X GENERAL PROVISIONS

- 10.1 The interpretation and application of the provisions of this Agreement shall be governed by the laws of the state of Washington.
- 10.2 Notices required to be given under this Agreement shall be in writing and shall be effective only when delivered to the addressee by mail or by facsimile at the address stated below, or at such other address as either party may hereafter state by written notice:

If to NeoRx:

Jeffrey J. Miller, Ph.D., J.D.
Vice President - Business Development and Legal Affairs
NeoRx Corporation
410 West Harrison Street
Seattle, Washington 98119
Telephone: (206) 281-7001, X518
Facsimile: (206) 284-7112

If to UABRF:

Dr. Kenneth J. Roozen
Executive Director - UAB Research Foundation
125 Mortimer Jordan Hall
1825 University Boulevard
UAB Station
Birmingham, Alabama 35294-2010
Telephone: (205) 934-0622
Facsimile: (205) 934-1221

or such other address as either party may request in writing.

10.3 This Agreement constitutes the entire understanding between the parties and supersedes all prior agreements and understandings between the parties with respect to the subject

matter hereof or information relating thereto, and neither party shall be obligated by any condition, promise, or representation other than those expressly stated herein or as may be subsequently agreed to by the parties hereto in writing.

- 10.4 Nothing contained in this Agreement shall be construed as creating any partnership or joint venture between the parties. Neither party shall be authorized to act as agent for the other, nor shall either party enter into any agreement or contract on behalf of the other as representative or agent.
- 10.5 This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties. Neither NeoRx nor UABRF shall assign this Agreement without the other's prior written consent, which shall not be unreasonably withheld. Neither party shall be deemed unreasonable if it withholds approval because of its good faith concern regarding protection of its intellectual property rights by the prospective assignee.
- 10.6 No waiver or modification of any of the terms of this Agreement shall be effective unless in writing and signed by both parties. A waiver by either party of any right under this Agreement shall not be deemed a waiver by that party of the same or any other right or any subsequent occasion.
- 10.7 If any of the provisions of this Agreement are determined to be to any extent invalid or unenforceable, the invalidity and unenforceability of that provision shall not affect the validity and enforceability of the remaining provisions of this Agreement, and the affected provision shall be construed as if it were written so as to be valid and enforceable to the maximum possible extent.
- 10.8 Each party and the individuals executing this Agreement on that party's behalf, represents and warrants to the other party that it has obtained any and all necessary corporate authority to make and perform this Agreement. Each party further represents and warrants to the other that it is not precluded by the terms of any other agreement from making or performing this Agreement.
- 10.9 Any controversy or dispute arising out of or relating to this Agreement shall be submitted to binding arbitration in Scattle, Washington, under the then existing Commercial Arbitration rules of the American Arbitration Association. Such decision may grant legal and equitable relief, including but not limited to injunction, and may grant any other form of relief appropriate. Judgment may be obtained on the arbitration award in any court having competent jurisdiction.

10.10 In the event that any arbitration or action should be commenced to enforce, or otherwise with respect to, any of the terms or conditions of this Agreement, the prevailing party shall be entitled to recover from the other, in addition to any and all other relief to which it may be entitled, all of the prevailing party's costs and expenses thereby incurred, including reasonable attorney fees relating to legal services provided in advance or connection with any such legal proceeding or any appeal thereof. The arbitrator or court shall determine which party has, under all the circumstances, "prevailed."

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed individually or, where applicable, by its duly authorized representative.

MEORX CORPORATION

Jeffrey J. Miller, Ph.D., J.D.

Vice President

Business Development and

Legal Affairs

THE UAB RESEARCH FOUNDATION

Its:

PATENT COOPERATION TREATY

INTERNATIONAL APPLICATION NO.: PCT/US92/08220

INTERNATIONAL FILING DATE: 25 September 1992

TITLE OF INVENTION: THERAPEUTIC INHIBITOR OF VASCULAR SHOOTH MUSCLE CELLS

PRIORITY DATE PREVIOUSLY CLAIMED: 27 September 1991

NAME OF APPLICANT: HEORY CORPORATION

AGENT'S FILE REF.: 13531/47.3

REQUEST FOR WITHDRAWAL OF PRIORITY CLAIM

TO THE INTERNATIONAL BUREAU:

Applicant respectfully requests that in connection with the above-identified international application, the claim for priority based on U.S. patent application, the claim for priority based on U.S. patent application No. 07/767,254, filed 27 September 1991 be withdrawn under Rule 90 J. Therefore, publication of the international application under Article 21(2)(a) should not occur until March, 1994.

This withdrawal is to be effective only if the date of publication of the international application under Article 21(2)(a) is not computed from the former priority date.

Agent for the Applicant

Michael L. Levine

Dated: February 1, 1993 STOEL RIVES BOLEY JONES 4 GREY 900 SW Fifth Avenue, Suite 2300 Portland, OR 97204-1268 (503) 224-3380

7071-37394.1 13331 0047

1	IN THE UNITED STATES DISTRICT COURT
2	FOR THE DISTRICT OF DELAWARE
3	HIGHLY CONFIDENTIAL
4	BOSTON SCIENTIFIC SCIMED, INC., and Case No. 03-283-SLR
5	BOSTON SCIENTIFIC CORPORATION,
6	Plaintiffs,
7	vs.
8	CORDIS CORPORATION and
9	JOHNSON & JOHNSON, INC.,
10	Defendants.
11	
12	BOSTON SCIENTIFIC SCIMED, et al., Case No. 03-1138-SLR
13	Plaintiffs,
14	vs.
15	CORDIS, et al., and GUIDANT, et al.,
16	Defendants.
17	
18	HIGHLY CONFIDENTIAL
19	30(b)(6) VIDEOTAPED DEPOSITION OF ANNA LEWAK WIGHT
20	Taken on behalf of the Defendant
21	January 27, 2005
22	
23	
24	
25	
11	·

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	. 54	4	56
1		1	
2	THE WITNESS: Yes.	2	
3	BY MR. MAS:	3	
4	Q. Okay. And the first document is the Kunz and	1 4	·
5		5	
6		6	
7		7	
8	Q. Correct.	8	So I'm — I can't answer that.
9	•	وا	BY MR. MAS:
10			
11	and the second s	111	the series to the total four determinant to the hast
12		112	F 2: -F-: 1: 2::0 F-: 2::0
13	· · · · · · · · · · · · · · · · · · ·	13	
14		14	the second to last
15	F	15	paragraph.
16			A. Uh-huh.
17		16	Q. Could you please just read that to yourself.
18	A. I'm not sure which one it was, but if you show	17	(The witness reviews the exhibit.)
19		18	A. Okay.
20		19	Q. Okay. Do you recall being aware that the
21	USCIP of CIP filed January 28th of 1993?	20	University of Alabama had these opinions with regard to
22	A. Yes.	21	Dr. Anderson and Dr. Kunz's contributions to their
23	Q. And that one in parentheses has Kunz and Klein	22 23	invention?
24	listed?	1	MR. JOHNSON: Objection to form, the specific
25	A. Yes.	24	that's laid in these two paragraph or generally? Vague.
-		23	THE WITNESS: At some point I became aware that
1.	C. And you and antered that the control of the cont		57
1 2	Q. And you understand that the information in the	1	there was there was, I don't know what you'd call it,
3	parentheses refers to the named inventors on those applications; correct?	2	a an issue as to the contributions in the early '90s as
4	MR. AL-SALAM: Objection. Objection, lack of	3	to Dr. Anderson and UAB.
5	foundation.	4	BY MR. MAS:
6		5	Q. Okay. Do you recall being aware of the views
7	MR. JOHNSON: Objection to form, foundation.	6	expressed by University of Alabama in the second to last
8	THE WITNESS: It doesn't say so, but I would assume so.	7	paragraph of Kunz Exhibit 14?
وا	BY MR. MAS:	8	MR. JOHNSON: Objection to form.
10	Q. Thank you. Let me hand you a copy of what's	9	THE WITNESS: I was aware of some of these -
11	been previously been marked as Kunz Exhibit 14.	10	some of this opinion. I'm not sure on every point. There
12		11	are a lot of things actually mentioned in here.
13	(Whereupon, Kunz Exhibit-14 was placed before the witness.)	12	BY MR. MAS:
14	A. Thank you.	13	Q. Okay. How did you become aware of it?
15	MR. JOHNSON: Thank you.	14	A. I don't remember. Probably through, you know,
16	BY MR. MAS;	15	through documents or perhaps files or conversations
17	•	16	with I don't remember how that came up.
18	Q. And just back to Exhibit 13 for a moment. That	17	Q. In the last paragraph the university expresses,
19	letter from Ms. Leith to Miss Hicks is dated February 19th, 1993; correct?	18	quote,
20		19	"It is the opinion of the University of Alabama
21	A. I'm sorry. That other one? Yes, yes.	20	Research Foundation that Dr. Anderson should be
22	Q. Okay. And now moving on to Exhibit 14. Do you	21	included as an inventor on the subsequent filed
23	recognize this?	22	patent applications, patent applications two and
1.	A. I don't remember if I specifically saw this	23	three as referenced above."
i .	letter. I just don't remember.	24	Do you see that?
125	O Okay So citting home to decree to the		
25	Q. Okay. So sitting here today you don't know	25	A. Uh-huh, yes, I see that's what it says.

Q. And if you go to the first page of Exhibit 14, you'll see the second and third patent applications that are referenced. A. Yes. Q. Were you aware that the University of Alabama Research Foundation expressed this opinion to NeoRx? MR. JOHNSON: Objection to form. THE WITNESS: I became aware that they believed he should be added on patent applications. I assume it's	1 2 3 4 5 6 7	submitted by NeoRx." Do you see that? A. Uh-huh. Q. And then Mr. Schroff states, quote, "After several discussions we have decided that Pete will be named as an inventor on all pending applications," closed
you'll see the second and third patent applications that are referenced. A. Yes. Q. Were you aware that the University of Alabama Research Foundation expressed this opinion to NeoRx? MR. JOHNSON: Objection to form. THE WITNESS: I became aware that they believed	2 3 4 5 6	Do you see that? A. Uh-huh. Q. And then Mr. Schroff states, quote, "After several discussions we have decided that Pete will be
are referenced. A. Yes. Q. Were you aware that the University of Alabama Research Foundation expressed this opinion to NeoRx? MR. JOHNSON: Objection to form. THE WITNESS: I became aware that they believed	3 4 5 6	A. Uh-huh. Q. And then Mr. Schroff states, quote, "After several discussions we have decided that Pete will be
A. Yes. Q. Were you aware that the University of Alabama Research Foundation expressed this opinion to NeoRx? MR. JOHNSON: Objection to form. THE WITNESS: I became aware that they believed	4 5 6	Q. And then Mr. Schroff states, quote, "After several discussions we have decided that Pete will be
Q. Were you aware that the University of Alabama Research Foundation expressed this opinion to NeoRx? MR. JOHNSON: Objection to form. THE WITNESS: I became aware that they believed	5 6	several discussions we have decided that Pete will be
Research Foundation expressed this opinion to NeoRx? MR. JOHNSON: Objection to form. THE WITNESS: I became aware that they believed	6	
MR. JOHNSON: Objection to form. THE WITNESS: I became aware that they believed		named as an inventor on all pending applications " closed
THE WITNESS: I became aware that they believed	17	member as an inventor on an penuing apprications, closed
•		quote.
he should be added on patent applications. I assume it's	8	Do you see that?
he should be added on patent applications. I assume it's	9	A. Yes.
these two.	10	Q. Do you know whether that was done?
BY MR: MAS:	11	A. I'm not sure what was pending exactly at that
Q. And how did you become aware of that?	12	time.
A. As I said, I'm not sure if it was through a	13	Q. Okay.
conversation or through looking at - I don't remember the	14	A. I know that he was added and on an application.
circumstances.	15	Q. Okay.
Q. Let me have you take a look at Kunz Exhibit 15.	16	A. It was also this is still before, you know, over
(Whereupon, Kunz Exhibit-15 was placed before	17	a year before I got there, so
the witness.)	18	Q. I'm just asking what you are aware of, if
And before you get to 15, I want you to just	19	anything, was done.
turn back to Kunz Exhibit 14 for a moment. Was this	20	A. Sure.
document sent to outside counsel with respect to issues	21	Q. If you refer back to the prior exhibit, Exhibit
concerning Dr. Anderson's role as an inventor?	22	14, there's an indication of three applications in the
A. I can't recall specifically. But if I'd had it,	23	file line; correct?
I would have sent it.	24	A. Yeah.
Q. Now, turning to Kunz Exhibit 15. Do you	25	Q. Okay. Do you know if Dr. Anderson was added to
59		61
recognize this document?	1	the second and third applications listed on the first page
A. I'm sorry. This next document. Exhibit 15.	2	of Exhibit 14?
Yes.	3	A. I don't know, because I can't actually identify
Q. What is this document?	4	them. I don't yeah.
A. It's a letter from Bob Schroff to Ken Roozen.	5	Q. Okay. And sitting here, do you know one way or
Q. And it's dated June 14th, 1993; correct?	6	the other whether Dr. Anderson was added to all of the
A. Correct.	7	pending applications as Mr. Schroff stated in this June
Q. When did you become aware of this letter?	8	14th, 1993 letter?
A. I don't remember when I became aware of this.	9	MR. AL-SALAM: Asked and answered.
Q. Okay.	10	MR. JOHNSON: Objection to form.
A. This was also before my time.	11	THE WITNESS: I just said I don't know what
Q. Was this letter provided to outside counsel in	12	exactly was pending. And these three I don't know exactly
connection with the prosecution of the Kunz patents?	13	which cases these are. You know, it's a very large
MR. JOHNSON: Objection to form.	14	portfolio. And I haven't looked at these cases or
THE WITNESS: At some point this was provided to	15	lineages in a long time, you know.
outside counsel. I don't know when it was provided to	16	BY MR. MAS:
outside counsel, because I don't know when I became aware	17	Q. Were you ever - strike that. Did you ever
of it or had possession of it.	18	become aware that Dr. Anderson was not added to any of the
BY MR. MAS:	19	applications that were pending at this time?
Q. Okay. Now, in the first paragraph of Exhibit	20	MR. AL-SALAM: Asked and answered.
Number 15 Mr. Schroff states that, quote,	21	THE WITNESS: Do I continue?
"I believe you are aware through discussions	22	MR. AL-SALAM: Yes.
71 B. A.	23	THE MITNIECC: Oh I don't bear about the
with Pete Anderson and Lucy Hicks that there has been	23	THE WITNESS: Oh, I don't know about these
some issue as to whether Pete should remain as an	24	specific applications, because I don't know what they are.
	conversation or through looking at — I don't remember the circumstances. Q. Let me have you take a look at Kunz Exhibit 15. (Whereupon, Kunz Exhibit-15 was placed before the witness.) And before you get to 15, I want you to just the current back to Kunz Exhibit 14 for a moment. Was this document sent to outside counsel with respect to issues concerning Dr. Anderson's role as an inventor? A. I can't recall specifically. But if I'd had it, would have sent it. Q. Now, turning to Kunz Exhibit 15. Do you 59 ecognize this document? A. I'm sorry. This next document. Exhibit 15. Yes. Q. What is this document? A. It's a letter from Bob Schroff to Ken Roozen. Q. And it's dated June 14th, 1993; correct? A. Correct. Q. When did you become aware of this letter? A. I don't remember when I became aware of this. Q. Okay. A. This was also before my time. Q. Was this letter provided to outside counsel in connection with the prosecution of the Kunz patents? MR. JOHNSON: Objection to form. THE WITNESS: At some point this was provided to outside counsel. I don't know when it was provided to outside counsel. I don't know when I became aware of it or had possession of it. BY MR. MAS: Q. Okay. Now, in the first paragraph of Exhibit lumber 15 Mr. Schroff states that, quote,	conversation or through looking at — I don't remember the circumstances. Q. Let me have you take a look at Kunz Exhibit 15. (Whereupon, Kunz Exhibit-15 was placed before the witness.) And before you get to 15, I want you to just the witness.) And before you get to 15, I want you to just the witness. And before you get to 15, I want you to just the witness. Concerning Dr. Anderson's role as an inventor? A. I can't recall specifically. But if I'd had it, the would have sent it. Q. Now, turning to Kunz Exhibit 15. Do you 59 ecognize this document? A. I'm sorry. This next document. Exhibit 15. A. It's a letter from Bob Schroff to Ken Roozen. Q. And it's dated June 14th, 1993; correct? A. I don't remember when I became aware of this. Q. Okay. A. This was also before my time. Q. Was this letter provided to outside counsel in connection with the prosecution of the Kunz patents? MR. JOHNSON: Objection to form. THE WITNESS: At some point this was provided to outside counsel, because I don't know when I became aware if it or had possession of it. BY MR. MAS: Q. Okay. Now, in the first paragraph of Exhibit lumber 15 Mr. Schroff states that, quote,

16 (Pages 58 to 61)

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2		2	
3	The state of the s	3	· · · · · · · · · · · · · · · · · · ·
4	(Whereupon, Anderson Exhibit-9 was placed before	4	
5	the witness.)	5	BY MR. MAS:
6	Can you identify this exhibit?	6	Q. Yes.
7	 I don't recall this, no, specifically. 	1 7	A. I don't recall the conversation. I don't recall
.8	Q. Do you recall ever seeing the June 23rd, 1993	8	speaking to him.
9	cover letter or the attachment which forms Anderson	وا	Q. Okay.
10	Exhibit 9?	10	
11	A. I don't remember, no.	111	
12	·_ ·	12	
13	A. As again, before I joined there.	13	Dr. Anderson a patent application and claims that he would
14	Q. Okay. Okay. Let me hand you then a copy of a	14	
15	document that we'll mark as Wight Exhibit 6, which is a	15	A. Yes.
16	one-page letter bearing Bates numbers UAB 0121.	16	
17	(Whereupon, a letter to Peter Anderson From Anna	17	Q. Did you add Dr. Anderson as a co-inventor on
18	Lewak Wight dated September 25, 1996 was marked as	18	this application?
19	Exhibit-6 for identification.)	19	A. I believe we did add him to this one.
20	A. Yes.	20	Q. Okay. Do you and why why was he added?
21	Q. Can you identify what Wight Exhibit 6 is?	1	MR. AL-SALAM: Objection to the extent that that
22	A. It's a letter from myself to Dr. Peter Anderson.	21	calls for attorney/client communications. If you're able
23	Q. Okay. And the letter is dated September 25th,	22	to answer that without revealing such communications, you
24	1996; correct?	23	may.
25	A. Correct.	24	MR. JOHNSON: And I'll just object to form.
	A. Correct	25	THE WITNESS: I can't speak from specific
	63	-	
1	Q. And that's your signature at the bottom of Wight	1	recall, but I'm presuming it's after I had discussions
2	Exhibit 6; correct?	2	with him. I don't know if I at that point had reviewed
3	A. Yes.	3	any particular documents.
4	Q. And you're identified as senior intellectual	4	BY MR. MAS:
5	property counsel; correct?	5	Q. He would have been okay. Sorry.
6	A. Right.	6	A. Go ahead.
7	Q. And the subject of this matter is U.S. patent	7	Q. Okay. Well, at this point, September 25th,
8	application serial number 08 slash 406921?	8	1996, you had determined that he should be added as a
9	A. Yes.	9	co-inventor on the 921 application; correct?
10	Q. And the 921 application was one of the	10	A. That's what this says, yes.
11	applications in the Kunz chain; correct?	11	Q. Okay. I mean, you would have done a review of
12	MR. JOHNSON: Objection, vague.	12	the file and made that determination before sending these
13	THE WITNESS: I don't have the tree, but I	13	materials to Dr. Anderson on September 25th of 1996;
14	assume so.	14	correct?
15	BY MR. MAS:	15	MR. JOHNSON: Objection to form.
16	Q. Okay. And in this letter you state,	16	THE WITNESS: I would have reviewed what we had
17	"It was a pleasure talking to you Friday	17	on hand and maybe speaking with him.
18	afternoon. I am sending you the patent application	18	BY MR. MAS:
19	and claims we discussed on which you are being added	19	Q. Okay.
20	as an inventor. Please let me know if you have any	20	- ·
21	comments or questions."	21	A. That would have
22	Do you see that?		Q. Would you have
23	A. Yes.	22	MR. AL-SALAM: Did you finish the question
24	Q. Do you recall having these discussions with	23	answer?
	Dr. Anderson and telling him that he would be added as an	24	THE WITNESS: And possibly discussions with
	Serving and results that the monito be added as an	25	outside counsel.

	66		68
1	BY MR. MAS:	1	investigation prior to the December 3rd, 1996 letter in
2	Q. Okay. Do you recall if outside counsel was	2	which you determined that Dr. Anderson should be named as
3	involved in the discussions prior to this?	3	a co-inventor on the 921 and 712 applications?
4	 A. I can't recall specific discussions about this. 	4	MR. JOHNSON: Objection to form.
5	It's a very, very large portfolio, and this was eight or	5	THE WITNESS: When you mean?
6	nine years ago.	6	BY MR. MAS:
7	O. Okay. Let me hand you a copy of what's been	7	Q. Yes.
8	previously been marked as Kunz Exhibit 17.	8	A. I can't tell you with any certainty. But it
9	(Whereupon, Kunz Exhibit-17 was placed before	9	would have been, you know, when I sent them the letter or
10	the witness.)		before I sent them the letter.
11	A. Uh-huh.	11	Q. So on or before December 3rd, 1996 you would
11			have —
12	Q. Can you identify Kunz Exhibit 17 for the record?		
13	A. Yes. It's a letter from me to Dr. Anderson.	13	A. To the
14	Q. And this letter is dated December 3rd, 1996;	14	MR. AL-SALAM: Let him finish the question.
15	correct?	15	BY MR. MAS: 1
16	A. Correct.	16	Q. You would have completed your review and made
17	Q. And that's your signature at the bottom of the	17	the determination that he should be added as a coninventor
18	first page of Kunz Exhibit 17?	18	on the 921 and 712 applications; correct?
19	A. It is.	19	MR. JOHNSON: Objection to form.
20	 Q. And again, you're identified here as director 	20	THE WITNESS: I would have reviewed what we had
21	intellectual property?	21	in hand, and the information we had in hand, and with
22	A. It is.	22	discussions with outside counsel we would have made
23	Q. Okay.	23	this or they would have made this determination or we
24	A. I am. I'm sorry.	24	would have made this determination. And there would have
25	Q. Okay. And the subject matter is identified as	25	been would have sent this to him on the information we
	67		69
1	application number 08 slash 406921 and application number	1	had at the time.
2	08 slash 389712; correct?	2	BY MR. MAS:
3	A. Yeah, correct.	3	Q. Okay. And based on the information you had at
4	Q. And underneath there it says, "Therapeutic	4	the time and the materials you reviewed, you determined
5	inhibitor of vascular smooth muscle cells;" correct?	5	that he should be named as a co-inventor on these two
6	A. That's the title I think, yeah.	6	applications, the 921 and 712; correct?
7	Q. And in the letter you state, "It was a pleasure	7	MR. JOHNSON: Objection to form.
8	talking with you yesterday. Thank you for your	8	THE WITNESS: Yes, I assume so, since that's
9	cooperation in signing and returning the petitions."	9	what it says.
10	Do you see that?	10	BY MR. MAS:
11	A. Yes.	11	Q. And you notified him accordingly
H	೧. 1ದ.		
11 12	O Do you recall what notitions that refer to?		
12	Q. Do you recall what petitions that refers to?	12	A. Yes.
13	A. I'm not sure what the petition was, yeah.	13	Q. — via this letter?
13 14	A. I'm not sure what the petition was, yeah.Q. The next paragraph states, "As we discussed I am	13 14	Q. — via this letter?MR. AL-SALAM: Let him finish the question.
13 14 15	A. I'm not sure what the petition was, yeah. Q. The next paragraph states, "As we discussed I am forwarding to you copies of the claims in the two	13 14 15	Q. — via this letter? MR. AL-SALAM: Let him finish the question. THE WITNESS: I'm sorry.
13 14 15 16	A. I'm not sure what the petition was, yeah. Q. The next paragraph states, "As we discussed I am forwarding to you copies of the claims in the two applications in which you are being named as an inventor."	13 14 15 16	Q. — via this letter? MR. AL-SALAM: Let him finish the question. THE WITNESS: I'm sorry. BY MR. MAS:
13 14 15 16 17	A. I'm not sure what the petition was, yeah. Q. The next paragraph states, "As we discussed I am forwarding to you copies of the claims in the two applications in which you are being named as an inventor." Do you see that?	13 14 15 16 17	Q. — via this letter?MR. AL-SALAM: Let him finish the question.THE WITNESS: I'm sorry.BY MR. MAS:Q. Correct?
13 14 15 16 17 18	 A. I'm not sure what the petition was, yeah. Q. The next paragraph states, "As we discussed I am forwarding to you copies of the claims in the two applications in which you are being named as an inventor." Do you see that? A. Yes. 	13 14 15 16 17 18	 Q. — via this letter? MR. AL-SALAM: Let him finish the question. THE WITNESS: I'm sorry. BY MR. MAS: Q. Correct? A. Yes.
13 14 15 16 17 18 19	 A. I'm not sure what the petition was, yeah. Q. The next paragraph states, "As we discussed I am forwarding to you copies of the claims in the two applications in which you are being named as an inventor." Do you see that? A. Yes. Q. So as of this date, December 3rd, 1996, you had 	13 14 15 16 17	Q. — via this letter?MR. AL-SALAM: Let him finish the question.THE WITNESS: I'm sorry.BY MR. MAS:Q. Correct?
13 14 15 16 17 18	 A. I'm not sure what the petition was, yeah. Q. The next paragraph states, "As we discussed I am forwarding to you copies of the claims in the two applications in which you are being named as an inventor." Do you see that? A. Yes. Q. So as of this date, December 3rd, 1996, you had determined that Dr. Anderson would be named as a 	13 14 15 16 17 18	 Q. — via this letter? MR. AL-SALAM: Let him finish the question. THE WITNESS: I'm sorry. BY MR. MAS: Q. Correct? A. Yes.
13 14 15 16 17 18 19	 A. I'm not sure what the petition was, yeah. Q. The next paragraph states, "As we discussed I am forwarding to you copies of the claims in the two applications in which you are being named as an inventor." Do you see that? A. Yes. Q. So as of this date, December 3rd, 1996, you had 	13 14 15 16 17 18 19	 Q. — via this letter? MR. AL-SALAM: Let him finish the question. THE WITNESS: I'm sorry. BY MR. MAS: Q. Correct? A. Yes. Q. Who besides yourself was involved in the
13 14 15 16 17 18 19 20	 A. I'm not sure what the petition was, yeah. Q. The next paragraph states, "As we discussed I am forwarding to you copies of the claims in the two applications in which you are being named as an inventor." Do you see that? A. Yes. Q. So as of this date, December 3rd, 1996, you had determined that Dr. Anderson would be named as a 	13 14 15 16 17 18 19 20	 Q. — via this letter? MR. AL-SALAM: Let him finish the question. THE WITNESS: I'm sorry. BY MR. MAS: Q. Correct? A. Yes. Q. Who besides yourself was involved in the investigation to determine whether Dr. Anderson should be
13 14 15 16 17 18 19 20 21	 A. I'm not sure what the petition was, yeah. Q. The next paragraph states, "As we discussed I am forwarding to you copies of the claims in the two applications in which you are being named as an inventor." Do you see that? A. Yes. Q. So as of this date, December 3rd, 1996, you had determined that Dr. Anderson would be named as a co-inventor on the 921 and 712 applications; correct? 	13 14 15 16 17 18 19 20 21	Q. — via this letter? MR. AL-SALAM: Let him finish the question. THE WITNESS: I'm sorry. BY MR. MAS: Q. Correct? A. Yes. Q. Who besides yourself was involved in the investigation to determine whether Dr. Anderson should be added as a co-inventor on the 921 and 712 applications?
13 14 15 16 17 18 19 20 21 22	 A. I'm not sure what the petition was, yeah. Q. The next paragraph states, "As we discussed I am forwarding to you copies of the claims in the two applications in which you are being named as an inventor." Do you see that? A. Yes. Q. So as of this date, December 3rd, 1996, you had determined that Dr. Anderson would be named as a co-inventor on the 921 and 712 applications; correct? MR. JOHNSON: Objection to form. 	13 14 15 16 17 18 19 20 21 22	 Q. — via this letter? MR. AL-SALAM: Let him finish the question. THE WITNESS: I'm sorry. BY MR. MAS: Q. Correct? A. Yes. Q. Who besides yourself was involved in the investigation to determine whether Dr. Anderson should be added as a co-inventor on the 921 and 712 applications? A. At this time it would have been the Schwegman
13 14 15 16 17 18 19 20 21 22 23	 A. I'm not sure what the petition was, yeah. Q. The next paragraph states, "As we discussed I am forwarding to you copies of the claims in the two applications in which you are being named as an inventor." Do you see that? A. Yes. Q. So as of this date, December 3rd, 1996, you had determined that Dr. Anderson would be named as a co-inventor on the 921 and 712 applications; correct? MR. JOHNSON: Objection to form. THE WITNESS: At that time, yes. 	13 14 15 16 17 18 19 20 21 22 23	 Q. — via this letter? MR. AL-SALAM: Let him finish the question. THE WITNESS: I'm sorry. BY MR. MAS: Q. Correct? A. Yes. Q. Who besides yourself was involved in the investigation to determine whether Dr. Anderson should be added as a co-inventor on the 921 and 712 applications? A. At this time it would have been the Schwegman firm.

11		_	
	7.	0	72
1		1	1 A. Uh-huh.
2	c	1 2	Q. And then next to it there's some handwriting
3	The state of the s	3	3 that says, "Being amended to add Peter Anderson." Do you
4	the transfer of the possibly said Embretson.	4	
5	C. The same state work treated travel been involved	? 5	MR. JOHNSON: Objection to form.
6	The second of the second may have had input	6	
7	The state of the s	7	7 BY MR. MAS:
8	c - in the district any series in thouse accorneys	8	Q. Is that your handwriting?
9		9	A. I can't tell. It could be my assistant, you
10	The state of the s	10	
11	, and the second per color before the.	11	Q. Okay. And there's more than just claims listed
12	the same and same at the time.	12	
13	and a service the fill hot sale	13	
14	, and a second trace been specifically	14	
15	involved in the inventorship. Possibly Bob Bob	15	
16		16	
17	t and the four texts districtly and the	17	
18	series of pages referring to various patent applications	18	A claimed.
19	and claims. Do you see that?	19	Q. And then going over to Bates number UAB 00089.
20	A. Yes.	20	
21	Q. Let's have you turn to UAB 00084. And can you	21	Q. There's a section in this document dealing with
22	tell me what is reflected on this page?	22	
23	MR. JOHNSON: I'm sorry. What page?	23	A. Yes.
24	MR. MAS: UAB 00084.	24	Q. And the inventors are identified as Lawrence L.
25	MR. JOHNSON: Thank you.	25	Kunz and Richard A. Klein?
1 2 3 4	THE WITNESS: You mean oh, the second page of this exhibit. BY MR. MAS: Q. Yes.	1 2 3 4	A. Yes. Q. And then there's some handwriting stating, "Being amended to add Peter Anderson"? A. Yes.
5	A. Okay. I'm sorry. Go ahead.	5	O Do you one short?
6	Q. What is this?		Q. Do you see that?
7		6	A. Yeah.
	A. It is a a claim sheet or a claim it's a	6 7	·
8	list of the claims in the 921 patent.	1	A. Yeah.
8	list of the daims in the 921 patent. Q. Okay.	7 8 9	A. Yeah. Q. And again, you sent this collection of materials to Dr. Anderson on December 3rd of 1996? A. Uh-huh.
8 9 10	list of the claims in the 921 patent. Q. Okay. A. Or 921, excuse me, application.	7 8 9 10	A. Yeah. Q. And again, you sent this collection of materials to Dr. Anderson on December 3rd of 1996? A. Uh-huh. Q. Now, how did you go about to ensure that
8 9 10 11	list of the claims in the 921 patent. Q. Okay. A. Or 921, excuse me, application. Q. Did you prepare this?	7 8 9 10 11	A. Yeah. Q. And again, you sent this collection of materials to Dr. Anderson on December 3rd of 1996? A. Uh-huh. Q. Now, how did you go about to ensure that Dr. Anderson was named in the 921 and 712 applications as
8 9 10 11 12	list of the claims in the 921 patent. Q. Okay. A. Or 921, excuse me, application. Q. Did you prepare this? A. It's it's prepared at NeoRx, yes. I mean, I	7 8 9 10 11 12	A. Yeah. Q. And again, you sent this collection of materials to Dr. Anderson on December 3rd of 1996? A. Uh-huh. Q. Now, how did you go about to ensure that Dr. Anderson was named in the 921 and 712 applications as a co-inventor?
8 9 10 11 12 13	list of the claims in the 921 patent. Q. Okay. A. Or 921, excuse me, application. Q. Did you prepare this? A. It's it's prepared at NeoRx, yes. I mean, I don't think I did the word processing, if that's what you	7 8 9 10 11 12 13	A. Yeah. Q. And again, you sent this collection of materials to Dr. Anderson on December 3rd of 1996? A. Uh-huh. Q. Now, how did you go about to ensure that Dr. Anderson was named in the 921 and 712 applications as
8 9 10 11 12 13 14	list of the claims in the 921 patent. Q. Okay. A. Or 921, excuse me, application. Q. Did you prepare this? A. It's it's prepared at NeoRx, yes. I mean, I don't think I did the word processing, if that's what you mean.	7 8 9 10 11 12 13 14	A. Yeah. Q. And again, you sent this collection of materials to Dr. Anderson on December 3rd of 1996? A. Uh-huh. Q. Now, how did you go about to ensure that Dr. Anderson was named in the 921 and 712 applications as a co-inventor?
8 9 10 11 12 13 14 15	list of the claims in the 921 patent. Q. Okay. A. Or 921, excuse me, application. Q. Did you prepare this? A. It's it's prepared at NeoRx, yes. I mean, I don't think I did the word processing, if that's what you mean. Q. No, but did you prepare the substance of the	7 8 9 10 11 12 13 14 15	A. Yeah. Q. And again, you sent this collection of materials to Dr. Anderson on December 3rd of 1996? A. Uh-huh. Q. Now, how did you go about to ensure that Dr. Anderson was named in the 921 and 712 applications as a co-inventor? MR. AL-SALAM: Object to the form of the
8 9 10 11 12 13 14 15 16	list of the claims in the 921 patent. Q. Okay. A. Or 921, excuse me, application. Q. Did you prepare this? A. It's it's prepared at NeoRx, yes. I mean, I don't think I did the word processing, if that's what you mean. Q. No, but did you prepare the substance of the information reported here?	7 8 9 10 11 12 13 14 15 16	A. Yeah. Q. And again, you sent this collection of materials to Dr. Anderson on December 3rd of 1996? A. Uh-huh. Q. Now, how did you go about to ensure that Dr. Anderson was named in the 921 and 712 applications as a co-inventor? MR. AL-SALAM: Object to the form of the question. MR. JOHNSON: Same objection. THE WITNESS: I don't know what I did
8 9 10 11 12 13 14 15 16	list of the claims in the 921 patent. Q. Okay. A. Or 921, excuse me, application. Q. Did you prepare this? A. It's it's prepared at NeoRx, yes. I mean, I don't think I did the word processing, if that's what you mean. Q. No, but did you prepare the substance of the information reported here? A. Probably, yes. Yes, I believe I put this	7 8 9 10 11 12 13 14 15 16 17	A. Yeah. Q. And again, you sent this collection of materials to Dr. Anderson on December 3rd of 1996? A. Uh-huh. Q. Now, how did you go about to ensure that Dr. Anderson was named in the 921 and 712 applications as a co-inventor? MR. AL-SALAM: Object to the form of the question. MR. JOHNSON: Same objection. THE WITNESS: I don't know what I did specifically in this case. But my practice would have
8 9 10 11 12 13 14 15 16 17 18	list of the daims in the 921 patent. Q. Okay. A. Or 921, excuse me, application. Q. Did you prepare this? A. It's it's prepared at NeoRx, yes. I mean, I don't think I did the word processing, if that's what you mean. Q. No, but did you prepare the substance of the information reported here? A. Probably, yes. Yes, I believe I put this together.	7 8 9 10 11 12 13 14 15 16 17	A. Yeah. Q. And again, you sent this collection of materials to Dr. Anderson on December 3rd of 1996? A. Uh-huh. Q. Now, how did you go about to ensure that Dr. Anderson was named in the 921 and 712 applications as a co-inventor? MR. AL-SALAM: Object to the form of the question. MR. JOHNSON: Same objection. THE WITNESS: I don't know what I did specifically in this case. But my practice would have been to tell outside counsel to prepare the paperwork or
8 9 10 11 12 13 14 15 16 17 18	list of the claims in the 921 patent. Q. Okay. A. Or 921, excuse me, application. Q. Did you prepare this? A. It's it's prepared at NeoRx, yes. I mean, I don't think I did the word processing, if that's what you mean. Q. No, but did you prepare the substance of the information reported here? A. Probably, yes. Yes, I believe I put this together. Q. Okay.	7 8 9 10 11 12 13 14 15 16 17 18	A. Yeah. Q. And again, you sent this collection of materials to Dr. Anderson on December 3rd of 1996? A. Uh-huh. Q. Now, how did you go about to ensure that Dr. Anderson was named in the 921 and 712 applications as a co-inventor? MR. AL-SALAM: Object to the form of the question. MR. JOHNSON: Same objection. THE WITNESS: I don't know what I did specifically in this case. But my practice would have been to tell outside counsel to prepare the paperwork or to make the amendment. We don't do any of the prosecution
8 9 10 11 12 13 14 15 16 17 18 19	list of the daims in the 921 patent. Q. Okay. A. Or 921, excuse me, application. Q. Did you prepare this? A. It's it's prepared at NeoRx, yes. I mean, I don't think I did the word processing, if that's what you mean. Q. No, but did you prepare the substance of the information reported here? A. Probably, yes. Yes, I believe I put this together. Q. Okay. A. Or directed my assistant.	7 8 9 10 11 12 13 14 15 16 17 18 19 20	A. Yeah. Q. And again, you sent this collection of materials to Dr. Anderson on December 3rd of 1996? A. Uh-huh. Q. Now, how did you go about to ensure that Dr. Anderson was named in the 921 and 712 applications as a co-inventor? MR. AL-SALAM: Object to the form of the question. MR. JOHNSON: Same objection. THE WITNESS: I don't know what I did specifically in this case. But my practice would have been to tell outside counsel to prepare the paperwork or
8 9 10 11 12 13 14 15 16 17 18 19 20	list of the claims in the 921 patent. Q. Okay. A. Or 921, excuse me, application. Q. Did you prepare this? A. It's it's prepared at NeoRx, yes. I mean, I don't think I did the word processing, if that's what you mean. Q. No, but did you prepare the substance of the information reported here? A. Probably, yes. Yes, I believe I put this together. Q. Okay. A. Or directed my assistant. Q. And this first page UAB 0084 continuing on to	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A. Yeah. Q. And again, you sent this collection of materials to Dr. Anderson on December 3rd of 1996? A. Uh-huh. Q. Now, how did you go about to ensure that Dr. Anderson was named in the 921 and 712 applications as a co-inventor? MR. AL-SALAM: Object to the form of the question. MR. JOHNSON: Same objection. THE WITNESS: I don't know what I did specifically in this case. But my practice would have been to tell outside counsel to prepare the paperwork or to make the amendment. We don't do any of the prosecution in house, because of — it's not feasible. BY MR. MAS:
8 9 10 11 12 13 14 15 16 17 18 19 20 21	list of the claims in the 921 patent. Q. Okay. A. Or 921, excuse me, application. Q. Did you prepare this? A. It's it's prepared at NeoRx, yes. I mean, I don't think I did the word processing, if that's what you mean. Q. No, but did you prepare the substance of the information reported here? A. Probably, yes. Yes, I believe I put this together. Q. Okay. A. Or directed my assistant. Q. And this first page UAB 0084 continuing on to UAB 00088 refers to the 921 application; correct?	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. Yeah. Q. And again, you sent this collection of materials to Dr. Anderson on December 3rd of 1996? A. Uh-huh. Q. Now, how did you go about to ensure that Dr. Anderson was named in the 921 and 712 applications as a co-inventor? MR. AL-SALAM: Object to the form of the question. MR. JOHNSON: Same objection. THE WITNESS: I don't know what I did specifically in this case. But my practice would have been to tell outside counsel to prepare the paperwork or to make the amendment. We don't do any of the prosecution in house, because of — it's not feasible. BY MR. MAS: Q. Okay. And do you recall directing your outside
8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	list of the daims in the 921 patent. Q. Okay. A. Or 921, excuse me, application. Q. Did you prepare this? A. It's it's prepared at NeoRx, yes. I mean, I don't think I did the word processing, if that's what you mean. Q. No, but did you prepare the substance of the information reported here? A. Probably, yes. Yes, I believe I put this together. Q. Okay. A. Or directed my assistant. Q. And this first page UAB 0084 continuing on to UAB 00088 refers to the 921 application; correct? A. Yes.	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. Yeah. Q. And again, you sent this collection of materials to Dr. Anderson on December 3rd of 1996? A. Uh-huh. Q. Now, how did you go about to ensure that Dr. Anderson was named in the 921 and 712 applications as a co-inventor? MR. AL-SALAM: Object to the form of the question. MR. JOHNSON: Same objection. THE WITNESS: I don't know what I did specifically in this case. But my practice would have been to tell outside counsel to prepare the paperwork or to make the amendment. We don't do any of the prosecution in house, because of — it's not feasible. BY MR. MAS: Q. Okay. And do you recall directing your outside counsel to make sure that Dr. Anderson is added to the 921
8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	list of the claims in the 921 patent. Q. Okay. A. Or 921, excuse me, application. Q. Did you prepare this? A. It's it's prepared at NeoRx, yes. I mean, I don't think I did the word processing, if that's what you mean. Q. No, but did you prepare the substance of the information reported here? A. Probably, yes. Yes, I believe I put this together. Q. Okay. A. Or directed my assistant. Q. And this first page UAB 0084 continuing on to UAB 00088 refers to the 921 application; correct?	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. Yeah. Q. And again, you sent this collection of materials to Dr. Anderson on December 3rd of 1996? A. Uh-huh. Q. Now, how did you go about to ensure that Dr. Anderson was named in the 921 and 712 applications as a co-inventor? MR. AL-SALAM: Object to the form of the question. MR. JOHNSON: Same objection. THE WITNESS: I don't know what I did specifically in this case. But my practice would have been to tell outside counsel to prepare the paperwork or to make the amendment. We don't do any of the prosecution in house, because of — it's not feasible. BY MR. MAS: Q. Okay. And do you recall directing your outside

1 MR. AL-SALAM: Yeah, that's getting close to 2 attorney/client privilege as well. I think I'm going to 3 instruct you not to answer that question. If you answer 4 it — if the question is generally do you recall 5 discussing the subject of it, I will let her answer yes or 6 no to that question. 7 BY MR. MAS: 8 Q. Okay. Mas: 9 Q. Okay. Ob you recall — 1 claims were amended. And I don't have a specific to the was not added. And that has — we've had discussions with counsel about that on various occase to the various occase to the would not be added as a co-inventor? 7 MR. JOHNSON: Objection to form. 8 THE WITNESS: I don't have a specific —	
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3 instruct you not to answer that question. If you answer 4 it — if the question is generally do you recall 5 discussing the subject of it, I will let her answer yes or 6 no to that question. 7 BY MR. MAS: 8 Q. Okay. Do you recall — 3 discussions with counsel about that on various occase 4 so — 5 Q. Okay. When was it determined that Dr. And 6 would not be added as a co-inventor? 7 MR. JOHNSON: Objection to form. 8 THE WITNESS: I don't have a specific —	ions,
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5 discussing the subject of it, I will let her answer yes or 6 no to that question. 7 BY MR. MAS: 8 Q. Okay. When was it determined that Dr. And 6 would not be added as a co-inventor? 7 MR. JOHNSON: Objection to form. 8 THE WITNESS: I don't have a specific	
6 no to that question. 6 would not be added as a co-inventor? 7 BY MR. MAS: 7 MR. JOHNSON: Objection to form. 8 Q. Okay. Do you recall 8 THE WITNESS: I don't have a specific	
7 BY MR. MAS: 7 MR. JOHNSON: Objection to form. 8 Q. Okay. Do you recall 8 THE WITNESS: I don't have a specific	erson
8 Q. Okay. Do you recall 8 THE WITNESS: I don't have a specific	
1 0 and the second because I don't be	
9 A. Which one am I answering? Okay. 9 specific date or specific — it would have — I don't ha	ve
10 Q. Do you recall generally discussing the subject 10 a specific time or date.	· ·
11 of adding Dr. Anderson to the 921 and 712 applications at 11 BY MR. MAS:	
12 this time? 12 Q. Okay. How about generally?	
13 A. I don't recall a specific conversation regarding 13 MR. JOHNSON: Same objection.	1
14 this. I'm just telling you what my practice would have 14 THE WITNESS: I don't know.	
15 been. 15 BY MR. MAS:	
16 Q. Do you recall not following through on what you 16 Q. Was Dr. Anderson ever told that he was not	going
17 said you would do in Kunz Exhibit 17? 17 to be added as a co-inventor to the 712 or 712	
18 MR. JOHNSON: Objection, mischaracterization, 18 application after December 3rd, 1996?	
19 form. 19 A. I don't know.	
20 THE WITNESS: Do I answer that? Okay. I don't 20 Q. You don't know?	
21 recall at this time not adding — adding him or adding 21 MR. AL-SALAM: Asked and answered.	
22 him. I do know that subsequently I learned 22 BY MR. MAS:	
23 subsequently that he has been or was added to IUS and that 23 Q. Why don't you know?	
24 he was not added to HCP. 24 MR. JOHNSON: Objection.	
25 BY MR. MAS: 25 MR. AL-SALAM: Yeah, object to the form of t	nat
1 Q. So you learned subsequently that he was added to the 921 application, but not added to the 712 application; is that what your testimony is? 4 A. Yes, because I don't recall exactly at this 5 time. 6 Q. Do you recall giving a copy of Kunz Exhibit 17 7 to your outside prosecution counsel on or about December 8 3rd of 1996? 9 A. This exact? I don't recall. 10 Q. Now, how did you learn that Dr. Anderson was not 11 added to the 712 application? 11 MR. JOHNSON: Objection to form. 12 MR. JOHNSON: Objection to form. 13 THE WITNESS: In the prosecution there was an 14 amendment of the claims in the 712 application that — 15 these were based on discussions with outside counsel, so 16 I'm not quite comfortable — I'm not sure how far. 17 MR. AL-SALAM: Don't answer the question if it 18 was based on discussions with outside counsel. 18 MY. MAS: 1996 you informed Dr. Anderson that he was being name a co-inventor on the 921 and 712 applications; correct? 7 A. Yes. 8 Q. And at some subsequent time you made a determination not to add Dr. Anderson to the 712 application; correct? 10 application; correct? 11 MR. JOHNSON: Objection to form, 12 mischaracterization. 12 THE WITNESS: I can't answer that question. 13 BY MR. MAS: 14 Q. Well, on December 3 1996 you informed Dr. Anderson that he was being name a co-inventor on the 921 and 712 applications; correct? 1 A. Yes. 8 Q. And at some subsequent time you made a determination not to add Dr. Anderson to the 712 application; correct? 11 MR. JOHNSON: Objection to form, 12 mischaracterization. 12 THE WITNESS: I can't answer that question. 13 BY MR. MAS: 14 Q. Well, on December 3 4 Q. And stome subsequent time you made a determination not to add Dr. Anderson to the 712 application; correct? 15 A. Yes. 8 Q. And at some subsequent time you made a determination not to add Dr. Anderson to the 712 application; correct? 16 MR. JOHNSON: Objection to form, 12 mischaracterization. 17 MR. MAS: 18 Q. Okay. And you have no knowledge of ever communicating to Dr. Anders	ed as
23 A. I can't tell you specifically when. 23 Q. Is that your testimony?	
24 Q. Okay. How about generally? 24 A. I do not recall myself specifically notifying	
25 A. I can tell you that during the prosecution the 25 him. Whether someone else notified him or whether	

	10	2	10
:	assignee NeoRx Corporation; correct?	- 1	10 1 BY MR. MAS:
2	2 A. Yes.	1:	Q. Go to the bottom —
3	MR. JOHNSON: Objection, lack of foundation.	:	A. I'm getting I'm lost here.
4	The states that	4	
9			
6	the one of the many one at the OAB Research	1 6	
7	Foundation was contacted regarding this assignment	1 7	
8	3 document?	8	B A. Yes.
9		9	Q. Do you see that document refers to the 254
10	MR. JOHNSON: Objection, lack of foundation,	10	
11		11	
12	111313	12	
13		13	BY MR. MAS:
14		14	Q. In Anderson Exhibit 10, yes.
15	· · · · 	15	
16	e / me to an anderstanding as to now	16	Q. Do you see that?
17	and the second of the second o	17	
18	the state of the s	18	e work dide reference is missing in the assignment
19	, a management outlined and the contraction of the	19	
20	and the conjection, regue, cans for	20	
21	•	21	THE WITNESS: I this is the file history one?
22	MR. JOHNSON: Objection to form, and a lack of	22	BY MR. MAS:
23	foundation.	23	Q. Yes.
24	THE WITNESS: This no.	24	A. The GC yes.
25	BY MR. MAS:	25	Q. Okay. Do you know why that reference is not
	103	\vdash	105
1	Q. Now, I want you to take a look at the last two	1	to the 254 application is not in the assignment contained
2	pages of Anderson Exhibit 10. Actually, the last three	2	
3	pages, which are the assignment and the signatures.	3	MR. JOHNSON: Objection to form.
4	A. This file history goes from most recent to	4	THE WITNESS: No.
5	most recent.	5	BY MR. MAS:
6	Q. Okay.	6	Q. Okay. Do you know whether Dr. Anderson was
7	A. I'm sorry. Go ahead.	7	asked to sign a new assignment in which the reference to
8	Q. I want you to take a look at the assignment, the	8	the 254 application was deleted?
9	three pages of the assignment that are attached to	9	MR. JOHNSON: Objection to form.
10 11	Anderson Exhibit 10. Do you have that?	10	THE WITNESS: No, I don't know.
12	A. Yes.	11	BY MR. MAS:
13	Q. Okay. And I want you to have that out, and also	12	Q. Okay.
14	at the same time look at the assignment in the actual file history.	13	A. I'm just trying to
15		14	Q. If you look at the signature of Dr. Anderson on
16	A. I have I have this out.	15	page 3 of the assignment in the Anderson Exhibit 10
17	Q. You have it in front of you. A. Okay.	16	A. Hold on, Yeah,
18		17	Q. And if you look at the signature in the file
19	Q. Okay? A. Yeah.	18	history copy of the assignment, those are the same
20		19	signatures; correct?
21	Q. Now, the assignment in the file history at GCY	20	MR. JOHNSON: Objection, form, lack of
22	712 does not include the reference to U.S. serial number	21	foundation, calls for expert testimony.
23	07 slash 767254 that was in the assignment sent to Dr. Anderson?	22	BY MR. MAS:
24		23	Q. Well, let me ask you to look at
ı	MR. JOHNSON: Objection, form, lack of foundation.	24	MR. AL-SALAM: Did you have an answer?
	TOUTIGUUUT.	25	THE MITTHECE, AL. T
25		25	THE WITNESS: No, I have no idea.

	106		108
1	BY MR. MAS:	1	form.
2	Q. Let me ask you to look at both signatures of	2	THE WITNESS: I don't know. This was this
3	Dr. Anderson and the dates on the assignment in the file	3	was which one was this? No.
4	history and the assignment on Anderson Exhibit 10.	4	BY MR. MAS:
5	A. Yes.	5	Q. Okay. Can you turn to GCY 716 in the file
6	Q. Would you agree those are the same signatures?	6	history. And again, we're back in Wight Exhibit 10, I
7	MR. AL-SALAM: Same objections.	7	think. Wight Exhibit 11. I'm sorry. Okay.
8	MR. JOHNSON: Objection to form, calls for	8	Do you have that GCY 716?
9	expert testimony, lack of foundation.	9	A. Yes.
10	THE WITNESS: I can't I can't I can't say.	10	Q. Okay. And this is the page that starts the file
11	BY MR. MAS:	11	wrapper continuation application for the 451?
12	Q. Okay. Look at the other signatures on that	12	A. 796?
13	page. Do you see any differences strike that.	13	Q. Yeah, 716.
14	Do you see any differences in the signatures on	14	A. Oh, I'm sorry.
15	page 3 of the assignment attached to Anderson 10 as	15	Q. I may have misspoke. I apologize. And when
16	compared to the signatures on file history copy at GCY	16	you're there, I'll just ask a new question.
17	714?	17	A. Yes.
18	MR. JOHNSON: Objection to form, lack of	18	Q. Okay. This is a request for file wrapper
19	foundation, and calls for expert testimony.	19	continuing application; correct?
20	THE WITNESS: They look similar.	20	A. Yes.
21	BY MR. MAS:	21	Q. And the patent office date stamp is May 25th,
22	Q. Do you know if the inventors were provided a	22	1995; correct?
23	subsequent declaration to sign that deleted reference to	23	A. Yes.
24 25	the 254 application? MR. JOHNSON: Objection to form, lack of	24 25	Q. And then it indicates that the document was
			filed or strike that. And then going to GCY 720, a few
	. 107		109
1			109
	foundation.	1	pages further.
2	THE WITNESS: I I don't know.	1 2	
3	THE WITNESS: I I don't know. BY MR. MAS:	2	pages further. A. Yes. Q. It identifies U.S. application 08 slash 450793
3 4	THE WITNESS: I I don't know. BY MR. MAS: Q. Do you know why the 254 application was deleted	2 3 4	pages further. A. Yes. Q. It identifies U.S. application 08 slash 450793 in the upper left-hand corner?
3 4 5	THE WITNESS: I I don't know. BY MR. MAS: Q. Do you know why the 254 application was deleted from the assignment?	2 3 4 5	pages further. A. Yes. Q. It identifies U.S. application 08 slash 450793 in the upper left-hand corner? A. Yes.
3 4 5 6	THE WITNESS: I I don't know. BY MR. MAS: Q. Do you know why the 254 application was deleted from the assignment? MR. AL-SALAM: Asked and answered.	2 3 4 5 6	pages further. A. Yes. Q. It identifies U.S. application 08 slash 450793 in the upper left-hand corner? A. Yes. Q. And the filing date's identified as May 25th,
3 4 5 6 7	THE WITNESS: I I don't know. BY MR. MAS: Q. Do you know why the 254 application was deleted from the assignment? MR. AL-SALAM: Asked and answered. THE WITNESS: I don't	2 3 4 5 6 7	pages further. A. Yes. Q. It identifies U.S. application 08 slash 450793 in the upper left-hand corner? A. Yes. Q. And the filing date's identified as May 25th, 1995?
3 4 5 6 7 8	THE WITNESS: I I don't know. BY MR. MAS: Q. Do you know why the 254 application was deleted from the assignment? MR. AL-SALAM: Asked and answered. THE WITNESS: I don't MR. JOHNSON: Objection to form.	2 3 4 5 6 7 8	pages further. A. Yes. Q. It identifies U.S. application 08 slash 450793 in the upper left-hand corner? A. Yes. Q. And the filing date's identified as May 25th, 1995? A. Yes.
3 4 5 6 7 8 9	THE WITNESS: I I don't know. BY MR. MAS: Q. Do you know why the 254 application was deleted from the assignment? MR. AL-SALAM: Asked and answered. THE WITNESS: I don't MR. JOHNSON: Objection to form. BY MR. MAS:	2 3 4 5 6 7 8 9	pages further. A. Yes. Q. It identifies U.S. application 08 slash 450793 in the upper left-hand corner? A. Yes. Q. And the filing date's identified as May 25th, 1995? A. Yes. Q. And the first named inventor Kunz?
3 4 5 6 7 8 9	THE WITNESS: I I don't know. BY MR. MAS: Q. Do you know why the 254 application was deleted from the assignment? MR. AL-SALAM: Asked and answered. THE WITNESS: I don't MR. JOHNSON: Objection to form. BY MR. MAS: Q. You can put Anderson 10 away for now. Do you	2 3 4 5 6 7 8 9	pages further. A. Yes. Q. It identifies U.S. application 08 slash 450793 in the upper left-hand corner? A. Yes. Q. And the filing date's identified as May 25th, 1995? A. Yes. Q. And the first named inventor Kunz? A. Yes.
3 4 5 6 7 8 9 10 11	THE WITNESS: I I don't know. BY MR. MAS: Q. Do you know why the 254 application was deleted from the assignment? MR. AL-SALAM: Asked and answered. THE WITNESS: I don't MR. JOHNSON: Objection to form. BY MR. MAS: Q. You can put Anderson 10 away for now. Do you know if anyone in your office deleted the reference to the	2 3 4 5 6 7 8 9 10 11	pages further. A. Yes. Q. It identifies U.S. application 08 slash 450793 in the upper left-hand corner? A. Yes. Q. And the filing date's identified as May 25th, 1995? A. Yes. Q. And the first named inventor Kunz? A. Yes. Q. And then if you could turn to page GCY 769.
3 4 5 6 7 8 9 10 11 12	THE WITNESS: I I don't know. BY MR. MAS: Q. Do you know why the 254 application was deleted from the assignment? MR. AL-SALAM: Asked and answered. THE WITNESS: I don't MR. JOHNSON: Objection to form. BY MR. MAS: Q. You can put Anderson 10 away for now. Do you know if anyone in your office deleted the reference to the 254 application and substituted the signatures in the new	2 3 4 5 6 7 8 9 10 11 12	pages further. A. Yes. Q. It identifies U.S. application 08 slash 450793 in the upper left-hand corner? A. Yes. Q. And the filing date's identified as May 25th, 1995? A. Yes. Q. And the first named inventor Kunz? A. Yes. Q. And then if you could turn to page GCY 769. A. I'm sorry. 769?
3 4 5 6 7 8 9 10 11 12 13	THE WITNESS: I I don't know. BY MR. MAS: Q. Do you know why the 254 application was deleted from the assignment? MR. AL-SALAM: Asked and answered. THE WITNESS: I don't MR. JOHNSON: Objection to form. BY MR. MAS: Q. You can put Anderson 10 away for now. Do you know if anyone in your office deleted the reference to the 254 application and substituted the signatures in the new document?	2 3 4 5 6 7 8 9 10 11 12 13	pages further. A. Yes. Q. It identifies U.S. application 08 slash 450793 in the upper left-hand corner? A. Yes. Q. And the filing date's identified as May 25th, 1995? A. Yes. Q. And the first named inventor Kunz? A. Yes. Q. And then if you could turn to page GCY 769. A. I'm sorry. 769? Q. Yes. Do you have that?
3 4 5 6 7 8 9 10 11 12 13 14	THE WITNESS: I I don't know. BY MR. MAS: Q. Do you know why the 254 application was deleted from the assignment? MR. AL-SALAM: Asked and answered. THE WITNESS: I don't MR. JOHNSON: Objection to form. BY MR. MAS: Q. You can put Anderson 10 away for now. Do you know if anyone in your office deleted the reference to the 254 application and substituted the signatures in the new document? MR. JOHNSON: Objection to form.	2 3 4 5 6 7 8 9 10 11 12 13 14	pages further. A. Yes. Q. It identifies U.S. application 08 slash 450793 in the upper left-hand corner? A. Yes. Q. And the filing date's identified as May 25th, 1995? A. Yes. Q. And the first named inventor Kunz? A. Yes. Q. And then if you could turn to page GCY 769. A. I'm sorry. 769? Q. Yes. Do you have that? A. Yes.
3 4 5 6 7 8 9 10 11 12 13	THE WITNESS: I I don't know. BY MR. MAS: Q. Do you know why the 254 application was deleted from the assignment? MR. AL-SALAM: Asked and answered. THE WITNESS: I don't MR. JOHNSON: Objection to form. BY MR. MAS: Q. You can put Anderson 10 away for now. Do you know if anyone in your office deleted the reference to the 254 application and substituted the signatures in the new document?	2 3 4 5 6 7 8 9 10 11 12 13 14 15	pages further. A. Yes. Q. It identifies U.S. application 08 slash 450793 in the upper left-hand corner? A. Yes. Q. And the filing date's identified as May 25th, 1995? A. Yes. Q. And the first named inventor Kunz? A. Yes. Q. And then if you could turn to page GCY 769. A. I'm sorry. 769? Q. Yes. Do you have that? A. Yes. Q. And in the lower right-hand corner there's a
3 4 5 6 7 8 9 10 11 12 13 14 15	THE WITNESS: I I don't know. BY MR. MAS: Q. Do you know why the 254 application was deleted from the assignment? MR. AL-SALAM: Asked and answered. THE WITNESS: I don't MR. JOHNSON: Objection to form. BY MR. MAS: Q. You can put Anderson 10 away for now. Do you know if anyone in your office deleted the reference to the 254 application and substituted the signatures in the new document? MR. JOHNSON: Objection to form. THE WITNESS: I don't I don't know. No. Not	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	pages further. A. Yes. Q. It identifies U.S. application 08 slash 450793 in the upper left-hand corner? A. Yes. Q. And the filing date's identified as May 25th, 1995? A. Yes. Q. And the first named inventor Kunz? A. Yes. Q. And then if you could turn to page GCY 769. A. I'm sorry. 769? Q. Yes. Do you have that? A. Yes. Q. And in the lower right-hand corner there's a date of May 29th, 1996. You see that? The stamp at the
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3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	THE WITNESS: I I don't know. BY MR. MAS: Q. Do you know why the 254 application was deleted from the assignment? MR. AL-SALAM: Asked and answered. THE WITNESS: I don't MR. JOHNSON: Objection to form. BY MR. MAS: Q. You can put Anderson 10 away for now. Do you know if anyone in your office deleted the reference to the 254 application and substituted the signatures in the new document? MR. JOHNSON: Objection to form. THE WITNESS: I don't I don't know. No. Not to my knowledge. BY MR. MAS: Q. If if the assignment had been changed, would you have expected the inventors to be contacted to sign a new assignment? A. Yes. At times we will amend documents if they're countersigned.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	pages further. A. Yes. Q. It identifies U.S. application 08 slash 450793 in the upper left-hand corner? A. Yes. Q. And the filing date's identified as May 25th, 1995? A. Yes. Q. And the first named inventor Kunz? A. Yes. Q. And then if you could turn to page GCY 769. A. I'm sorry. 769? Q. Yes. Do you have that? A. Yes. Q. And in the lower right-hand corner there's a date of May 29th, 1996. You see that? The stamp at the bottom. A. Oh, 5/29/96? Q. Yes. A. Yeah. Q. And this is a petition to correct inventorship —

28 (Pages 106 to 109)

	. 110		112
1	MR. AL-SALAM: Did you answer that?	1	
2	THE WITNESS: Oh, I'm sorry. Yes.	2	A. I'm sorry. Oh, filed. Yeah.
3	BY MR. MAS:	3	Q. Okay. And
4	 Q. And the petition concludes that, "Richard Klein, 	4	A. Which case this is.
5	David Grainger, James Metcalfe, Peter Weissberg and Peter	5	Q. How was the conclusion reached?
6	Anderson are no longer inventors of the subject matter	6	MR. JOHNSON: Objection to form.
7	claimed in the above identified application."	7	THE WITNESS: I can't state on this particular
8	-	8	case, because I can't recognize, unless I have the patent
9	A. Yes.	9	in front of me and I know which case this is for or a
10	Q. Were you involved with that determination?	10	3
11	A. I'm not sure which case this is, the 793. Is	11	But typically we would have discussed this with
12	there an NeoRx designation on here? Hold on. There's	12	outside counsel and perhaps with internally and looked at
13	not. I would let's see. I can't identify that	13	any documents that we had relating to this and then made
14	specific case, but I don't have our reference number.	14	the determination.
15	Q. Okay.	15	BY MR. MAS:
16	A. But I would have been yeah, I would have	16	Q. Did you interview the the inventors that
17 18	I'm sorry. Go ahead.	17	remained and the inventors that you deleted?
19	MR. AL-SALAM: Did you finish your answer?	18	A. I'm not sure if we did.
20	THE WITNESS: What was the question again? It was	19	Q. Did you communicate to the inventors that were
21	BY MR. MAS:	20	going to be deleted that you had determined that they
22	Q. Were you involved?	21	should not be co-inventors any further on this
23	A. To some extent I would have been involved in	22	application?
24	this, yes.	23 24	MR. JOHNSON: Objection to form.
25	Q. Okay. Let me perhaps help you. If you could	25	THE WITNESS: Not necessarily. BY MR. MAS:
	they are the participated in you could	23	DI PIR. PIAS:
		_	
1	111 turn to GCY 776.		113
1 2	turn to GCY 776. A. Yes.	1 2	Q. Okay. Do you recall contacting Dr. Anderson or
	turn to GCY 776. A. Yes.	2	Q. Okay. Do you recall contacting Dr. Anderson or the University of Alabama to inform them that Dr. Anderson
2	turn to GCY 776.	1	Q. Okay. Do you recall contacting Dr. Anderson or the University of Alabama to inform them that Dr. Anderson was being deleted?
2	turn to GCY 776. A. Yes. Q. And this is the amendment that was filed in May 1996; correct?	2	 Q. Okay. Do you recall contacting Dr. Anderson or the University of Alabama to inform them that Dr. Anderson was being deleted? A. I don't know. But I also I don't know. I
2 3 4	turn to GCY 776. A. Yes. Q. And this is the amendment that was filed in May 1996; correct? A. I'm looking at it. That's it says, yes.	2 3 4	Q. Okay. Do you recall contacting Dr. Anderson or the University of Alabama to inform them that Dr. Anderson was being deleted? A. I don't know. But I also I don't know. I don't know which case this is. We don't use the serial
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	turn to GCY 776. A. Yes. Q. And this is the amendment that was filed in May 1996; correct? A. I'm looking at it. That's — it says, yes. Q. And the first paragraph of the amendment indicates that the remaining inventors shall be Lawrence Kunz and John M. Reno? A. Yes. Q. And then in the third paragraph it states, "In April 1996 the legal representatives of NeoRx Corporation and the undersigned outside patent counsel concluded that claims directed to particular embodiments of the invention of which Richard Klein, David Grainger, James C. Metcalfe, Peter L. Weissberg and Peter Anderson were co-inventors which were included in the application at the time of filing had been canceled in the amendments filed July 26th, 1995 and September 21, 1995;" correct? A. That's what it says, yes.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q. Okay. Do you recall contacting Dr. Anderson or the University of Alabama to inform them that Dr. Anderson was being deleted? A. I don't know. But I also I don't know. I don't know which case this is. We don't use the serial number references. Q. In connection with these inventorship reviews, would you have provided documents in your internal files to outside counsel to review? A. If we had documents, yes. Q. Then let me just have you turn to GCY 779. A. Yes. Q. And this is another petition to correct inventorship filed in this case? A. Yes. Q. And in this petition you've requested that John Reno be deleted as a co-inventor? A. Yes. Q. Correct? Then if you turn to GCY 812. There's a notice of allowability in the case?
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	turn to GCY 776. A. Yes. Q. And this is the amendment that was filed in May 1996; correct? A. I'm looking at it. That's — it says, yes. Q. And the first paragraph of the amendment indicates that the remaining inventors shall be Lawrence Kunz and John M. Reno? A. Yes. Q. And then in the third paragraph it states, "In April 1996 the legal representatives of NeoRx Corporation and the undersigned outside patent counsel concluded that claims directed to particular embodiments of the invention of which Richard Klein, David Grainger, James C. Metcalfe, Peter L. Weissberg and Peter Anderson were co-inventors which were included in the application at the time of filing had been canceled in the amendments filed July 26th, 1995 and September 21, 1995;" correct? A. That's what it says, yes. Q. Now, were you — you were one of the legal representatives — A. At the time.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q. Okay. Do you recall contacting Dr. Anderson or the University of Alabama to inform them that Dr. Anderson was being deleted? A. I don't know. But I also I don't know. I don't know which case this is. We don't use the serial number references. Q. In connection with these inventorship reviews, would you have provided documents in your internal files to outside counsel to review? A. If we had documents, yes. Q. Then let me just have you turn to GCY 779. A. Yes. Q. And this is another petition to correct inventorship filed in this case? A. Yes. Q. And in this petition you've requested that John Reno be deleted as a co-inventor? A. Yes. Q. Correct? Then if you turn to GCY 812. There's a notice of allowability in the case? A. Okay. Yes. Where's the patent? Yes. Q. Okay. We're going to put this file away now, and we're going to move on to another one.

11			
	MR. MAS. Sura		116
1	MR. MAS: Sure.	1	-,
2	THE VIDEOGRAPHER: The time is 12:24 p.m. Going	1	MR. JOHNSON: Objection to form.
3	off the record.	3	THE WITNESS: Yes.
4	(Lunch recess taken.)	4	BY MR. MAS:
5	THE VIDEOGRAPHER: Back on record. The time is	5	Q. Okay. Now, turning — and let me ask you this.
6	1:32 p.m.	6	The first word and last word on the — on the assignments
7	BY MR. MAS:	7	in Anderson Exhibit 10 and Anderson Exhibit 11 are the
8	Q. Ms. Wight, I'd like to follow up on a few items	8	same; correct?
9	we went over before the break. Do you have Anderson	9	A. The first word, could you repeat that? The
10	Exhibit 10 in front of you?	10	first word and the last word?
11	A. I do.	11	Q. Yes, the first word "whereas" and the last word
12	Q. Okay. And I'd also now like to hand you a copy	12	"claim" are the first and last words on both assignment
	of Anderson Exhibit 11. Oh, let me have that one.	13	documents; correct?
14	(Whereupon, Anderson Exhibit-11 was placed	14	MR. AL-SALAM: You're just talking about this
15	before the witness.)	15	page?
16	Ms. Wight, is Anderson Exhibit 11 the assignment	16	BY MR. MAS:
17	that was recorded in the patent office in the 451	17	Q. Yes, page 1.
18 19	application? A. Number 11, yes.	18 19	A. Oh, yes.
20		20	Q. And if you turn to page 2 in the assignments
21	Q. Okay. Now, going back to exhibit Anderson Exhibit 10 for a moment. The individual that sent this	21	contained in Anderson 10 and 11, they both start with the word "priority;" correct?
22	assignment back to Dr. Anderson is Sue Lintott.	22	A. Yes. Correct.
23	Who was Sue Lintott in November of 1994?	23	Q. And now if you look at the signatures that are
24	A. She was a patent paralegal that had been working		on page 2 of both assignment documents, they're the same;
P. 14	in the office.		correct?
	115		117
1	Q. Okay. She worked under your direction?	1	MR. JOHNSON: Objection.
2	A. At that time — when was this? Yes, I think I'd	2	MR. AL-SALAM: Asked and answered.
3	started the week before.	3	MR. JOHNSON: Formation, foundation, asked and
4	Q. Okay. Now, turning to the assignment. And why	4	answered.
5	don't you place before you the first page of the		
6		5	THE WITNESS: They appear similar, yes.
	assignment that is included in Anderson Exhibit 10, and	6	THE WITNESS: They appear similar, yes. BY MR. MAS:
7	then the first page of the assignment that was submitted	6 7	BY MR. MAS: Q. Okay. In fact, they appear exactly the same;
8	then the first page of the assignment that was submitted to the patent office, which is Anderson Exhibit 11.	6 7 8	BY MR. MAS: Q. Okay. In fact, they appear exactly the same; correct?
8	then the first page of the assignment that was submitted to the patent office, which is Anderson Exhibit 11. Do you have those before you?	6 7 8 9	BY MR. MAS: Q. Okay. In fact, they appear exactly the same; correct? MR. JOHNSON: Objection to form, lack of
8 9 10	then the first page of the assignment that was submitted to the patent office, which is Anderson Exhibit 11. Do you have those before you? A. I do.	6 7 8 9 10	BY MR. MAS: Q. Okay. In fact, they appear exactly the same; correct? MR. JOHNSON: Objection to form, lack of foundation, calls for expert testimony, and has been asked
8 9 10 11	then the first page of the assignment that was submitted to the patent office, which is Anderson Exhibit 11. Do you have those before you? A. I do. Q. And again, in the assignment document in	6 7 8 9 10 11	BY MR. MAS: Q. Okay. In fact, they appear exactly the same; correct? MR. JOHNSON: Objection to form, lack of foundation, calls for expert testimony, and has been asked and answered several times.
8 9 10 11 12	then the first page of the assignment that was submitted to the patent office, which is Anderson Exhibit 11. Do you have those before you? A. I do. Q. And again, in the assignment document in Anderson Exhibit 10 there's a reference to the priority	6 7 8 9 10 11 12	BY MR. MAS: Q. Okay. In fact, they appear exactly the same; correct? MR. JOHNSON: Objection to form, lack of foundation, calls for expert testimony, and has been asked and answered several times. THE WITNESS: They look similar, yes. They look
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30 (Pages 114 to 117)

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9 Q. Okay. Do you know whether the first page was 10 simply redacted and the same signatures attached to the 11 first page of the assignment? 12 MR. JOHNSON: Objection, lack of foundation. 13 THE WITNESS: I don't know. 14 BY MR. MAS: 15 Q. Okay. 16 A. I don't know. 17 Q. Would that have been proper conduct to replace 18 the first page of the assignment and attach the signatures 19 that had been previously made to the prior document? 18 MR. JOHNSON: Objection to form, argumentative. 19 MR. JOHNSON: Objection to form, argumentative. 21 MR. AL-SALAM: Vague. 22 MR. JOHNSON: Objection to form, argumentative. 23 THE WITNESS: You mean to substitute in a page? 24 BY MR. MAS: 25 Q. Yes. 19 MR. JOHNSON: Objection to form argumentative in a page? 26 Gon't think, yes. 27 A. Not without the permission of the inventors I 2 don't think, yes. 28 Q. Okay. And to your knowledge — let me ask this again. Do you have any knowledge that the inventors were ever contacted and advised that you were — that NeoRx was 6 substituting a new first page to this assignment redacting a priorit reference to the 254 application had been made to 124 assignment; correct? 10 MR. JOHNSON: Objection, lack of foundation. 11 reference to the 254 application had been made to 12 assignment; correct? 12 dars. JOHNSON: Objection, lack of foundation. 13 MR. JOHNSON: Objection to form, argumentatures. 14 MR. AL-SALAM: Asked and answered as well 16 THE WITNESS: No, 1 ave no knowledge. 15 Wight Exhibit 12 (Whereupon, a file history for 08/389,712 was mrked as Exhibit-12 for identification.) 16 MR. JOHNSON: Objection to form, argumentative. 17 (Whereupon, a file history for 08/389,712 was mrked as Exhibit-12 for identification.) 18 (Whereupon, a file history for 08/389,712 was mrked as Exhibit-12 for identification.) 19 (Whereupon, a file history for the 712 application or more formally U.S. serial number 08389712. And it has Bates number? 20 (Ara) University for the 712 application? 21 through 3167. Did I misread the number? 22 MR. JOHNSON: Objection to form,		· · · · · · · · · · · · · · · · · · ·	7	,	4I
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1 A. Not without the permission of the inventors I 2 don't think, yes. 3 Q. Okay. And to your knowledge let me ask this 4 again. Do you have any knowledge that the inventors were 5 contacted and advised that you were that NeoRx was 6 substituting a new first page to the assignment and 7 attaching their signatures to the assignment and 8 submitting it to the patent office? 9 MR. JOHNSON: Objection to form, assumes facts 10 not in evidence. 11 THE WITNESS: I have no knowledge either way. 12 BY MR. MAS: 13 Q. Okay. Do you have knowledge that Dr. Anderson 14 was never notified that his signature was being used and 15 attached to a new first page assignment? 1 through 3167. Did I misread the number? MR. JOHNSON: I think you meant 70. 8 WR. JOHNSON: I think you meant 70. 9 A. Yes. 10 Q. And the filing date's identified as February 11 Sth, 1995; correct? 12 A. Yes. 13 Q. And the application; correct? 14 A. Yes.					
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3 Q. Okay. And to your knowledge let me ask this 4 again. Do you have any knowledge that the inventors were 5 contacted and advised that you were that NeoRx was 6 substituting a new first page to the assignment and 7 attaching their signatures to the assignment and 8 submitting it to the patent office? 9 MR. JOHNSON: Objection to form, assumes facts 10 not in evidence. 11 THE WITNESS: I have no knowledge either way. 12 BY MR. MAS: 13 Q. Okay. Do you have knowledge that Dr. Anderson 14 was never notified that his signature was being used and 15 attached to a new first page assignment? 3 BY MR. MAS: 4 Q. Okay. And I'd like to have you turn to page 5 2652. 6 A. Yes. 7 Q. And do you see that this is a copy of the file 8 history for the 712 application? 9 A. Yes. 10 Q. And the filing date's identified as February 11 15th, 1995; correct? 12 A. Yes. 13 Q. And the application is a CIP of the 669 14 application; correct? 15 A. Yes.				The parameter of the inventors :	
4 again. Do you have any knowledge that the inventors were 5 contacted and advised that you were that NeoRx was 6 substituting a new first page to the assignment and 7 attaching their signatures to the assignment and 8 submitting it to the patent office? 9 MR. JOHNSON: Objection to form, assumes facts 10 not in evidence. 11 THE WITNESS: I have no knowledge either way. 12 BY MR. MAS: 13 Q. Okay. Do you have knowledge that Dr. Anderson 14 was never notified that his signature was being used and 15 attached to a new first page assignment? 4 Q. Okay. And I'd like to have you turn to page 5 2652. 6 A. Yes. 7 Q. And do you see that this is a copy of the file 8 history for the 712 application? 9 A. Yes. 10 Q. And the filing date's identified as February 11 15th, 1995; correct? 12 A. Yes. 13 Q. And the application is a CIP of the 669 application; correct? 15 A. Yes.				• •	
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6 substituting a new first page to the assignment and 7 attaching their signatures to the assignment and 8 submitting it to the patent office? 9 MR. JOHNSON: Objection to form, assumes facts 10 not in evidence. 11 THE WITNESS: I have no knowledge either way. 12 BY MR. MAS: 13 Q. Okay. Do you have knowledge that Dr. Anderson 14 was never notified that his signature was being used and 15 attached to a new first page assignment? 6 A. Yes. 7 Q. And do you see that this is a copy of the file 8 history for the 712 application? 9 A. Yes. 10 Q. And the filing date's identified as February 11 15th, 1995; correct? 12 A. Yes. 13 Q. And the application is a CIP of the 669 14 application; correct? 15 A. Yes.	ige GC1				5
7 attaching their signatures to the assignment and submitting it to the patent office? 9 MR. JOHNSON: Objection to form, assumes facts 10 not in evidence. 11 THE WITNESS: I have no knowledge either way. 12 BY MR. MAS: 13 Q. Okay. Do you have knowledge that Dr. Anderson 14 was never notified that his signature was being used and 15 attached to a new first page assignment? 7 Q. And do you see that this is a copy of the file 8 history for the 712 application? 9 A. Yes. 10 Q. And the filing date's identified as February 11 15th, 1995; correct? 11 A. Yes. 12 A. Yes. 13 Q. And the application is a CIP of the 669 application; correct? 14 A. Yes.					6
8 submitting it to the patent office? 9 MR. JOHNSON: Objection to form, assumes facts 10 not in evidence. 11 THE WITNESS: I have no knowledge either way. 12 BY MR. MAS: 13 Q. Okay. Do you have knowledge that Dr. Anderson 14 was never notified that his signature was being used and 15 attached to a new first page assignment? 8 history for the 712 application? 9 A. Yes. 10 Q. And the filing date's identified as February 11 15th, 1995; correct? 12 A. Yes. 13 Q. And the application is a CIP of the 669 14 application; correct? 15 A. Yes.	file		_		7
9 MR. JOHNSON: Objection to form, assumes facts 10 not in evidence. 11 THE WITNESS: I have no knowledge either way. 12 BY MR. MAS: 13 Q. Okay. Do you have knowledge that Dr. Anderson 14 was never notified that his signature was being used and 15 attached to a new first page assignment? 9 A. Yes. 10 Q. And the filing date's identified as February 11 15th, 1995; correct? 12 A. Yes. 13 Q. And the application is a CIP of the 669 14 application; correct? 15 A. Yes.	IIIC				.8
10 not in evidence. 11 THE WITNESS: I have no knowledge either way. 12 BY MR. MAS: 13 Q. Okay. Do you have knowledge that Dr. Anderson 14 was never notified that his signature was being used and 15 attached to a new first page assignment? 10 Q. And the filing date's identified as February 11 15th, 1995; correct? 12 A. Yes. 13 Q. And the application is a CIP of the 669 14 application; correct? 15 A. Yes.	٠.	• •		MR. JOHNSON: Objection to form, assumes facts	9
11 THE WITNESS: I have no knowledge either way. 12 BY MR. MAS: 13 Q. Okay. Do you have knowledge that Dr. Anderson 14 was never notified that his signature was being used and 15 attached to a new first page assignment? 11 15th, 1995; correct? 12 A. Yes. 13 Q. And the application is a CIP of the 669 14 application; correct? 15 A. Yes.	v		10		10
12 BY MR. MAS: 13 Q. Okay. Do you have knowledge that Dr. Anderson 14 was never notified that his signature was being used and 15 attached to a new first page assignment? 12 A. Yes. 13 Q. And the application is a CIP of the 669 14 application; correct? 15 A. Yes.	,	15th, 1995; correct?		THE WITNESS: I have no knowledge either way.	11
13 Q. Okay. Do you have knowledge that Dr. Anderson 14 was never notified that his signature was being used and 15 attached to a new first page assignment? 13 Q. And the application is a CIP of the 669 14 application; correct? 15 A. Yes.					12
14 was never notified that his signature was being used and 15 attached to a new first page assignment? 15 A. Yes.					13
15 attached to a new first page assignment? 15 A. Yes,		· ·		was never notified that his signature was being used and	14
		•		attached to a new first page assignment?	15
				MR. JOHNSON: Objection to form, calls for	N.
17 speculation of what Dr. Anderson knew. 17 applications that are referenced there. Let me have	ive you	applications that are referenced there. Let me have yo		speculation of what Dr. Anderson knew.	17
The second secon		turn to page GCY 2857. You have that? Are you there			
19 evidence. 19 A. I'm sorry. Yes.					19
20	on at	Q. Okay. The inventors on the 712 application at		THE WITNESS: I don't know what Dr. Anderson	20
		this time are identified as Mr - Dr. Kunz and Mr. Klein		knew.	21
22 BY MR. MAS: 22 A. Yes.					
23 Q. Would it have been proper conduct before the 23 Q. And now if you could turn to GCY 2929.		Q. And now if you could turn to GCY 2929.	23	The second secon	
24 U.S. Patent Office to substitute a new first page to this 24 MR. JOHNSON: Did you say 2929?		·	24	U.S. Patent Office to substitute a new first page to this	
25 assignment and attach signatures that were done for a 25 MR. MAS: Yes.		• •	25		

31 (Pages 118 to 121)

	122		124
1	MR. JOHNSON: Thank you.	1	A. Yes.
2	THE WITNESS: Yes.	2	Q. And again, this document was signed by you on
3	BY MR. MAS:	3	behalf of NeoRx?
4	Q. And this is part of an office action; correct?	4	A. Yes.
5	A. Yes.	5	Q. On April 23rd, 1997; correct?
6	Q. Do you see item 4 at the bottom of 2929 where	6	A. Yes.
7	the examiner has raised a rejection based on obviousness	7	Q. And in this document you state in the second
8	type double-patenting?	8	paragraph that you "have reviewed the documents in the
9	A. Yes.	9	chain of title of the patent application identified above,
10	Q. And the rejection is over the claims of	10	and to the best of my knowledge and belief title is in the
11	co-pending application 08450793? A. Yes.	11 12	assignee identified above;" correct? A. Yes.
12		13	
13	Q. Okay. What's a double-patenting rejection? MR. AL-SALAM: Object to the extent it calls for	14	Q. And the assignee identified above is NeoRx Corporation?
14 15	legal for expert testimony or legal conclusion.	15	A. Yes.
16	MR. JOHNSON: Same objection.	16	Q. Okay. Now, if you turn back to GCY 2966.
17	THE WITNESS: It's patenting the same thing	17	A. Yes.
18	twice, essentially.	18	Q. And this is the petition that went along with
19	BY MR. MAS:	19	these other papers to correct the inventorship pursuant to
20	Q. Could you turn to page GCY 2959?	20	37 CFR 1.48A; correct?
21	A. Excuse me. Yes.	21	MR. JOHNSON: Objection to form.
22	Q. And do you see at the bottom of 2959 in this	22	THE WITNESS: Yes.
23	response it states, quote,	23	BY MR. MAS:
24	"This amendment is accompanied by a petition	24	Q. And it's dated April 15th, 1997; correct?
25	pursuant to 37 CFR 1.48 to correct the inventorship	25	A. Yes.
П	the joint inventorship of Lawrence Kunz and John Reno." Do you see that? A. I do. Q. And this amendment was signed on May 23rd, 1997; correct? A. Yes. Q. Now, if you could turn to GCY 2968. Okay. And you see that this is a consent of assignee to correct inventorship in the 712 application? A. Yes. Q. And this document was signed by you on April 23rd, 1997? A. Yes. Q. Okay. And in this document on behalf of NeoRx you state that, "NeoRx consents to the change of inventorship in the above-identified application from the joint inventorship of Lawrence Kunz and Richard Klein to	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	document states that, "In early 1996 the complete record of the parent application of the above-identified application was reviewed by senior intellectual property counsel of NeoRx Corporation." You see that? A. Uh-huh. Q. And you were senior A. Yes. Q intellectual property counsel at NeoRx at that time; correct? A. Yes. Q. And immediately it states, "Immediately subsequent to the review the senior intellectual property counsel of NeoRx Corporation and outside patent counsel conducted a legal and factual analysis to determine whether the named inventors were the actual inventors of the subject matter claimed in the above-identified application;" correct?
21	the joint inventorship of Lawrence Kunz and John M. Reno;"	21	A. Yes, that's what it says.
22	correct?	22	Q. So as you're stating here to the patent office,
23	A. Yes.	23	you had reviewed the complete record of the parent
24	Q. And then if you turn to the next page GCY 2969,	24	application to the 712 application; correct?
25	you see a certificate under 37 CFR 3.73B?	25	A. Yes. That's what it says, yes.
			32 (Pages 122 to 125)

32 (Pages 122 to 125)

	12	6	12
1		1	
2		1 2	
3	A. Yes.	1 3	
4	Q. And then going on to the next page GCY 2967 it	1 4	
5	states, quote,	1 5	
6	"In April 1996 the senior intellectual property	1 6	
7	counsel of NeoRx Corporation and outside patent	1 7	
8	counsel concluded that claims directed to a	8	
9	particular embodiment of the invention of which	9	
10	Richard A. Klein was a co-inventor were never	10	1112 111112331 1101
11	presented in the above-identified application;"	111	
12	correct?	12	
13	A. Uh-huh, yes.	13	
14	Q. Now, in December of 1996 you had told	14	
15	Dr. Anderson that he was being added as a co-inventor to	15	
16	the 712 application; correct?	16	
17	MR. JOHNSON: Objection to form.	17	
18	BY MR. MAS:	18	The transfer confects
19	Q. And that was in the letter Kunz 17, which was	19	
20	marked earlier.	20	the state of the s
21	A. Okay. Can you repeat the question?	21	of 1996, then UAB would have had rights to this
22	Q. Ms. Wight, isn't it true that in December of	22	
23	1996 you informed Dr. Anderson that he was being added as	23	
24	a co-inventor to the 712 application?	1	for
25	A. In December of '96 you said?	25	MR. AL-SALAM: Lack of foundation.
		1	THE SACRIT. EBCK OF TOURINGHOR.
	127		
1	Q. Yes.	1	THE WITNESS: Yes.
2	A. I'm trying to recall the letter. I think it was	2	BY MR. MAS:
3	December of '96.] 3	Q. Because Dr. Anderson had assigned all of his
4	Q. Okay. And now a few months later in April of	4	rights in his invention to the University of Alabama
5	1997 NeoRx petitioned the patent office to correct the	5	Research Foundation by that point; correct?
6	inventorship of the 712 application; correct?	6	MR. JOHNSON: Objection, calls for a legal
7	A. Yes.	7	conclusion, and mischaracterization of the documents.
8	Q. And in the petition that was submitted to the	8	THE WITNESS: Yes.
9	patent office, NeoRx did not, in fact, add Dr. Anderson as	9	BY MR. MAS:
10	a co-inventor to the 712 application; correct?	10	Q. And by not adding Dr. Anderson to this
11	A. Correct.	11	application in strike that.
12	Q. Did you ever tell Dr. Anderson that a petition	12	And by not adding Dr. Anderson as an inventor in
13	for correction was filed in the 712 case, but that he was	13	the 712 application, NeoRx would be the only assignee;
14	left off?	14	correct?
15	A. I don't recall.	15	MR. JOHNSON: Objection, form.
16	Q. Okay. Now, in the petition that was filed in	16	THE WITNESS: Yes.
17	April of 1997 NeoRx refers to an analysis that you	17	MR. MAS:
18	performed in early 1996; correct?	18	Q. Now, do you know why NeoRx never informed the
	A. Yes.	19	patent office of its inventorship review that it had
19			
19 20	Q. And according to the petition, your conclusion	20	performed in the December 1995 time from 2
20	Q. And according to the petition, your conclusion was that Dr. Kunz and Dr. Reno should be the inventors on	20 21	performed in the December 1996 time frame? MR. JOHNSON: Objection lack of foundation
20 21	Q. And according to the petition, your conclusion was that Dr. Kunz and Dr. Reno should be the inventors on the 712; correct?	21	MR. JOHNSON: Objection, lack of foundation,
20 21	was that Dr. Kunz and Dr. Reno should be the inventors on	21 22	MR. JOHNSON: Objection, lack of foundation, mischaracterization.
20 21 22	was that Dr. Kunz and Dr. Reno should be the inventors on the 712; correct? A. Yes.	21 22 23	MR. JOHNSON: Objection, lack of foundation, mischaracterization. THE WITNESS: No.
20 21 22 23	was that Dr. Kunz and Dr. Reno should be the inventors on the 712; correct?	21 22	MR. JOHNSON: Objection, lack of foundation, mischaracterization.

	patent office of the inventorship review that it had	1	co-inventor?
1	·	2	
2	performed in early 1996, that is April of 1996? A. Yes.	3	MR. AL-SALAM: Same objections.
3	Q. And why was that?	4	MR. JOHNSON: Same objections. THE WITNESS: Whatever information I had at the
4	-	5	time when I communicated with Dr. Anderson would have led
5	A. I don't recall specifically, but the	6	me to believe that he was an inventor at that time. And
6	inventorship change was apparently to the these inventors here that are listed.	7	that would have been an honest statement of my
7	Q. And that was the analysis you conducted in April	8	understanding at that time.
8	of 1996; correct?	9	BY MR. MAS:
10	A. Let me look. Yes. And with the further	10	O. Okay. You never told the patent office of that
11	amendment.	11	inventorship determination that you made in December of
12	Q. Okay. And by 19 by December of 1996 your	12	1996; correct?
13	conclusions with regard to inventorship had changed from	13	MR. JOHNSON: Objection, form.
14	that you had concluded in April of 1996?	14	MR. AL-SALAM: Object to the form, asked and
15	MR. JOHNSON: Objection to form, compound,	15	answered.
16		16	THE WITNESS: I would I did not inform the
17	vague. THE WITNESS: Could you restate that?	17	patent office, no. But the inventorship determination may
18	BY MR. MAS:	18	have changed or additional documentation may have come to
19	Q. Yes. By December of 1996 your conclusions with	19	light. There may have been additional conversations. I
20	regard to inventorship had changed from your prior	20	can't remember this far back as to what happened exactly
21	conclusions in April of 1996; right?	21	at that time.
22	MR. JOHNSON: Objection to form.	22	BY MR. MAS:
23	THE WITNESS: Yes, according to	23	Q. Well, but in fact, you refer all the way back to
24	BY MR. MAS:	24	a inventorship analysis that you performed over a year
25	Q. Yes, in fact	25	before the April filing in 1997?
	. 131		133
1	MR. AL-SALAM: Did you finish your answer?	1	MR. JOHNSON: What was the question?
2	THE WITNESS: Yes, but I'm not I don't recall	2	THE WITNESS: This was eight years ago.
3	which claims were in the case at that time.	3	BY MR. MAS:
4	BY MR. MAS:	4	Q. Right. But what I'm saying is in your
5	Q. Okay. In fact, as of December of 1996 you	5	submission to the patent office in April of 1997 you refer
6	concluded that Dr. Anderson should be a named co-inventor	6	to a inventorship analysis that you performed a year
7	on the 712 application?	7	earlier in April 1996?
8	MR. JOHNSON: Objection to form.	8	A. Yes.
9	BY MR. MAS:	9	Q. And you make no mention at all of the changed
10	Q. Right?	10	analysis that you had in December of 1996?
11 12	MR. JOHNSON: Objection to form. THE WITNESS: I'm trying to make sure. Yes.	11	MR. JOHNSON: Objection to form,
13	BY MR. MAS:		mischaracterization.
14		13 14	THE WITNESS: If there was a change in
15	Q. Okay. Now, when you told Dr. Anderson in December of 1996 that he should be a co-inventor on the	15	determination, it would not have been we would not have
16	712 application, were you being honest with Dr. Anderson?	16	informed the patent office we made a determination and we
17	MR. AL-SALAM: Objection to the form of the	17	changed it or we changed it. You wouldn't inform the patent office unless it was relevant to an inventorship
18	question:	18	change.
19	THE WITNESS: I object to that.	19	BY MR. MAS:
20	MR. JOHNSON: Form, argumentative.	20	Q. But
21	MR. AL-SALAM: Yeah, it assumes misstates the	21	A. But I don't recall particular circumstances. So
22	testimony as well.	22	you're asking me to speculate on something I don't recall
23	BY MR. MAS:	23	from eight years ago.
24	Q. Were you being honest with Dr. Anderson when you	24	Q. Okay. Now, there's no mention in your
			submission to the patent office about some additional
25	told him in December of 1996 that he should be a	25	SUDITISSION UD LITE DALENT OMICE ANNIT SOME AGGINONAL

34 (Pages 130 to 133)

		-	
	134	4	136
1		1	1 Several times before lunch.
2	1996; correct?	1 :	
3	MR. JOHNSON: Objection to form, asked and	1 3	
4	answered several times.	1	
5	THE WITNESS: About — say that again.	1 5	
6		1 6	
7	Q. Yes. Well, we know that you believe that	1 7	
8		1 8	
9	as of December 3rd, 1996; correct?	9	
10	A. Yes.	10	
11	Q. Okay. Now, in your submission to the patent	11	
12		12	2 - answered.
13	was performed between December of 1996 and April of 1997;	13	
14			was not added.
15	MR. JOHNSON: Objection, mischaracterization	15	
16	that it's her petition.	16	
17	THE WITNESS: Actually, we do. It says in	17	· · · · · · · · · · · · · · · · · · ·
18	February of 1997.	18	
19	BY MR. MAS:	19	
20	Right. And these claims with regard to taxol,	20	
21	that had nothing to do with Dr. Anderson; correct?	21	MR. JOHNSON: — to form, argumentative.
22	A. Correct.	22	
23	 Q. Okay. In fact, this reference here is to the 	23	Q. Didn't NeoRx want to keep Dr. Anderson off these
24	issue of whether John Reno was a co-inventor; correct?	24	
25	A. Yes.	25	
<u> </u>			
	135		
1	Q. Okay. I'm talking about Dr. Anderson, Do you	1	A No.
1 2	Q. Okay. I'm talking about Dr. Anderson. Do you	1	A. No.
H	Q. Okay. I'm talking about Dr. Anderson. Do you mention anything about an analysis done between December	1 2	A. No. Q. Okay. Now, you never did add Dr. Anderson to
2	Q. Okay. I'm talking about Dr. Anderson. Do you	1	A. No. Q. Okay. Now, you never did add Dr. Anderson to the 712 application?
2 3	Q. Okay. I'm talking about Dr. Anderson. Do you mention anything about an analysis done between December of 1996 and the date this petition was filed where it was	1 2 3	A. No. Q. Okay. Now, you never did add Dr. Anderson to the 712 application? A. No.
2 3 4	Q. Okay. I'm talking about Dr. Anderson. Do you mention anything about an analysis done between December of 1996 and the date this petition was filed where it was determined that Dr. Anderson should not be an inventor?	1 2 3 4	A. No. Q. Okay. Now, you never did add Dr. Anderson to the 712 application? A. No. Q. Okay. Did-you ever tell Dr. Anderson why
2 3 4 5	Q. Okay. I'm talking about Dr. Anderson. Do you mention anything about an analysis done between December of 1996 and the date this petition was filed where it was determined that Dr. Anderson should not be an inventor? MR. JOHNSON: Objection to form. THE WITNESS: If I understand correctly, you're asking if there was mention in this petition about the	1 2 3 4 5	A. No. Q. Okay. Now, you never did add Dr. Anderson to the 712 application? A. No. Q. Okay. Did-you ever tell Dr. Anderson why throughout the entire prosecution following December 1996
2 3 4 5 6	Q. Okay. I'm talking about Dr. Anderson. Do you mention anything about an analysis done between December of 1996 and the date this petition was filed where it was determined that Dr. Anderson should not be an inventor? MR. JOHNSON: Objection to form. THE WITNESS: If I understand correctly, you're	1 2 3 4 5 6	 A. No. Q. Okay. Now, you never did add Dr. Anderson to the 712 application? A. No. Q. Okay. Did you ever tell Dr. Anderson why throughout the entire prosecution following December 1996 that he was never added to the 712 application?
2 3 4 5 6 7 8 9	Q. Okay. I'm talking about Dr. Anderson. Do you mention anything about an analysis done between December of 1996 and the date this petition was filed where it was determined that Dr. Anderson should not be an inventor? MR. JOHNSON: Objection to form. THE WITNESS: If I understand correctly, you're asking if there was mention in this petition about the	1 2 3 4 5 6 7	 A. No. Q. Okay. Now, you never did add Dr. Anderson to the 712 application? A. No. Q. Okay. Did-you ever tell Dr. Anderson why throughout the entire prosecution following December 1996 that he was never added to the 712 application? MR. JOHNSON: Objection. You've asked that
2 3 4 5 6 7 8	Q. Okay. I'm talking about Dr. Anderson. Do you mention anything about an analysis done between December of 1996 and the date this petition was filed where it was determined that Dr. Anderson should not be an inventor? MR. JOHNSON: Objection to form. THE WITNESS: If I understand correctly, you're asking if there was mention in this petition about the inventorship determination or re-determination about Dr. Anderson. BY MR. MAS:	1 2 3 4 5 6 7 8	 A. No. Q. Okay. Now, you never did add Dr. Anderson to the 712 application? A. No. Q. Okay. Did-you ever tell Dr. Anderson why throughout the entire prosecution following December 1996 that he was never added to the 712 application? MR. JOHNSON: Objection. You've asked that question three or four times already.
2 3 4 5 6 7 8 9 10	Q. Okay. I'm talking about Dr. Anderson. Do you mention anything about an analysis done between December of 1996 and the date this petition was filed where it was determined that Dr. Anderson should not be an inventor? MR. JOHNSON: Objection to form. THE WITNESS: If I understand correctly, you're asking if there was mention in this petition about the inventorship determination or re-determination about Dr. Anderson. BY MR. MAS: Q. Where is that? Where is there	1 2 3 4 5 6 7 8 9	 A. No. Q. Okay. Now, you never did add Dr. Anderson to the 712 application? A. No. Q. Okay. Did-you ever tell Dr. Anderson why throughout the entire prosecution following December 1996 that he was never added to the 712 application? MR. JOHNSON: Objection. You've asked that question three or four times already. THE WITNESS: I don't recall whether we told him
2 3 4 5 6 7 8 9 10 11 12	Q. Okay. I'm talking about Dr. Anderson. Do you mention anything about an analysis done between December of 1996 and the date this petition was filed where it was determined that Dr. Anderson should not be an inventor? MR. JOHNSON: Objection to form. THE WITNESS: If I understand correctly, you're asking if there was mention in this petition about the inventorship determination or re-determination about Dr. Anderson. BY MR. MAS: Q. Where is that? Where is there A. I'm just saying that's what you're is that	1 2 3 4 5 6 7 8 9	 A. No. Q. Okay. Now, you never did add Dr. Anderson to the 712 application? A. No. Q. Okay. Did-you ever tell Dr. Anderson why throughout the entire prosecution following December 1996 that he was never added to the 712 application? MR. JOHNSON: Objection. You've asked that question three or four times already.
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	138		140
1	MR. JOHNSON: Objection to form, asked and	1	1996 that Dr. Anderson should be named as a co-inventor;
2	answered.	2	correct?
3	THE WITNESS: Because I'm not clear as to	3	MR. JOHNSON: Objection to form,
4	timing, I can tell you that I know that the claims were	4	mischaracterization of the former testimony.
5	amended at one point in the issued claims based on	5	THE WITNESS: I actually don't know if those
6	information we had and discussions with outside counsel,	6	were the same documents.
7	Dr. Anderson would not be named on this 712 application or	7.	BY MR. MAS:
8	patent, excuse me.	8	Q. Okay. Well, you certainly had reviewed those
9	BY MR. MAS:	9	documents at some point, because in April of 1996 you had
10	Q. Now, the 712 application resulted in the 009	10	reviewed the quote, "complete record of the application;"
11	patent; correct?	11	right?
12	A. Yes.	12	MR. JOHNSON: Objection, vague.
13	Q. Okay.	13	THE WITNESS: The complete record meaning the
14	A. I don't have it in front of me.	14	file history? I mean, you're saying — yes.
15	Q. How did you reach or arrive at your	15	BY MR. MAS:
16	determination that Dr. Anderson should not be a	16	Q. I don't know what — did you review these
17	co-inventor on this patent?	17	invention disclosures and letters from Dr. Andarson and
18	MR. JOHNSON: Objection to form, asked and	18	Dr. Kunz before December 3rd of 1996?
19	answered.	19	A. I reviewed whatever I had in our possession at
20	THE WITNESS: Based on discussions with outside	20	the time. I don't know if everything was in our
21	counsel and a review of documents that we had in our	21	possession at that time or later. The documents are not
22 23	possession, we made the determination that Dr. Anderson was not an inventor on the 009 patent.	22	always all in one place.
24	BY MR. MAS:	1350	There may be things in, for example, with Dr. Schroff or with Dr. Kunz or other files. So there's no
25	Q. What documents did you review?		way for me to know if we had everything at one time. And
	Q. Mist comment on 755 fortuni.		way to the to down it we had everything at one affer. And
	120		
	139		things do come comotimes not all at the come time
1	A. We reviewed invention disclosures, the there	1 2	things do come sometimes not all at the same time.
2	A. We reviewed invention disclosures, the there was a a document as between Dr. Anderson and Dr. Kunz	2	things do come sometimes not all at the same time. Q. Do you recall having reviewed anything new in
2	A. We reviewed invention disclosures, the there was a a document as between Dr. Anderson and Dr. Kunz as to early contributions, and at some those are the	2	things do come sometimes not all at the same time. Q. Do you recall having reviewed anything new in this later analysis?
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36 (Pages 138 to 141)

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li .	. 14	2	144
1			
2	is there	2	
3	- · · · · · - ·	3	5
4	Q. Yes. I want you to have before you the 009	4	Q. Okay. And what would you consider Biostenting?
5	patent. Do you have that?	5	
6	A. I do.	6	MR. JOHNSON: Objection to form.
7	Q. And you have those claims of that patent;	7	
8	correct?	8	migration concept where an artery is remains in the
9	A. Yes.	وا	open position or stented open.
10	Q. And then I'd like you to take a look at the	10	
11	claims that were existing in December of 1996, Kunz	111	Q. And is that as a result of the therapeutic
12	Exhibit 17.	12	
13	A. Do I have Kunz Exhibit 17 in here?	13	-
14	Q. Yes, you do.	14	
15	A. The claims in the 009 patent are directed to	15	
16	a the concept of Biostenting, which is the contraction	16	- ·
17	or migration.	17	
18	Q. Is that all that they're directed to?	18	
19	MR. JOHNSON: Objection, calls for a legal	19	
20	condusion.	20	
21	MR. AL-SALAM: Also vague.	21	BY MR. MAS:
22	THE WITNESS: They all include the Biostenting.	22	Q. Okay. My question was, is it your belief that
	We called it Biostenting contraction or migration	23	Dr. Anderson had no inventive contribution to the
24	Biostenting concept. I'm looking at the independent	24	Biostenting?
25	claims. Excuse me.	25	A. Yes.
\vdash			
1	143		145
1	BY MR. MAS:	1	Q. Do you understand that Dr. Anderson believes he
2	Q. So all of the independent daims in the 009	2	is a co-inventor on the 009 patent?
3	patent require Biostenting?	13	
4		-	MR. JOHNSON: Objection, form.
II _	MR. JOHNSON: Objection, vague.	4	MR. JOHNSON: Objection, form. THE WITNESS: I would yes.
5	BY MR. MAS:	4 5	THE WITNESS: I would yes. BY MR. MAS:
6	BY MR. MAS: Q. Correct?	4 5 6	THE WITNESS: I would yes. BY MR. MAS: Q. Now, when you mention this Biostenting effect,
6 7	BY MR. MAS: Q. Correct? MR. JOHNSON: Objection, vague, calls for a	4 5 6 7	THE WITNESS: I would yes. BY MR. MAS: Q. Now, when you mention this Biostenting effect, does that mean that the drug by itself through its
6 7 8	BY MR. MAS: Q. Correct? MR. JOHNSON: Objection, vague, calls for a legal conclusion.	4 5 6 7 8	THE WITNESS: I would yes. BY MR. MAS: Q. Now, when you mention this Biostenting effect, does that mean that the drug by itself through its anticontractile and antimigration mechanisms keep the
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	146	١.	148
1	MR. AL-SALAM: Objection, mischaracterizes the	1	have to look through the
2	evidence.	2	BY MR. MAS:
3	THE WITNESS: I'm not sure that's correct.	3	Q. Okay. Well, let me have you then look to the
4	BY MR. MAS:	4	patent. You can look to — and I'll refer you to — since
5	Q. Okay. Do you believe that Dr. Anderson is a	5	you have the 009 patent, I'll find the cite for you.
6	co-inventor on claim 14 of the 009 patent?	6	Column 17.
7	MR. JOHNSON: Objection to form.	7	Do you have that?
8	THE WITNESS: I would be relying on on my	8	A. Column again, 17?
9	outside counsel's analysis. Can I answer that?	10	Q. Column 17. A. Yes.
10	MR. AL-SALAM: You can answer yes or no.	1	17 177
11	THE WITNESS: I don't believe he is an inventor	11	Q. Okay. And if you look at line 21 it states,
12	on that.	12	quote, "Representative examples of cytoskeletal inhibitors
13	BY MR. MAS:	13	include Colchisine, Vinblastin, cytochalasins, et cetera."
14	Q. Okay. Let me have you turn back to Anderson	14	Do you see that?
15	Kunz Exhibit 6.	15	A. I see, yes.
16	A. Yes.	16	Q. So according to the 009 patent Colchisine is a
17	Q. Okay. Actually, take a look at claim 5 on the	18	cytoskeletal inhibitor; correct?
18	009 patent. Do you see that? A. Yes.		A. It characterizes it, yes.
19 20	Q. Okay. And this is a dependent daim from daim	19 20	Q. And in fact, if you turn to to column 16 of the 009 patent. And at lines 47 there's a list of
	1 or 2?		cytostatic agents.
22	A. Yes.	22	Do you see that?
23	Q. And it states that, "The method of claim 1 or 2	23	A. Yes.
24	wherein the therapeutic agent is a cytoskeletal inhibitor	24	Q. And that also includes adriamycin?
25	or an analog thereof."	25	A. Yes.
	· .		
	147		149
1	Do you see that?	1	Q. That's another agent that Dr. Anderson mentions
2	A. Yes.	2	in his write-up in Kunz Exhibit 6?
3	Q. Okay. Now, if you turn to Kunz Exhibit 6. And	3	MR. AL-SALAM: Objection, lack of foundation.
4	this was the December 18th, 1990 letter from Dr. Anderson	4	MR. JOHNSON: Lack of foundation,
5	to Dr. Kunz?	5	mischaracterization of the document.
6	A. Yes.	6	MR. AL-SALAM: Right.
7	Q. Do you see that?	7	THE WITNESS: Is this a joint it says it's a
8	A. Yes.	8	Peter Anderson and Larry Kunz write-up.
9	Q. And do you see on the third page of this	9	BY MR. MAS:
10	exhibit, which is part of the write-up prepared by	10	Q. Yes. Do you see that?
11	Dr. Anderson. Do you have that before you?	11	A. Yes.
12	A. Yes.	12	Q. And then he also mentions methotrexate in the
13	Q. Okay. Now, at the top of the third page first	13	write-up included with Kunz Exhibit 6. And that's another
14	fuil sentence Dr. Anderson states,	14	cytostatic agent identified in column 16?
15	"Other cytotoxic substances that will either	15	MR. AL-SALAM: Who's he?
16	kill smooth muscle cells, toxins, or prevent cell	16	MR. MAS: Dr. Anderson.
17	division, Colchisine, methotrexate, adriamycin, et	17	MR. AL-SALAM: I want to make that clear.
18	cetera, could also prevent restenosis if delivered to	18	You're saying that he wrote that?
19	the PTCA site."	19	MR. MAS: Yes.
20	Do you see that?	20	MR. JOHNSON: Objection, the author's
21	A. Yes.	21	MR. MAS: I think the evidence is very clear on
22	 Q. Now, Colchisine is a cytoskeletal inhibitor; 	22	that.
23	correct?	23	MR. JOHNSON: Objection, mischaracterization of
24	MR. AL-SALAM: Objection, lack of foundation.	24	the evidence. It dearly lists both of them as authors.
25	THE WITNESS: I don't recall specifically. I'd	25	BY MR. MAS:
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1	Foundation join in its request; correct?	1	767254. Do you see that?
2	MR. AL-SALAM: Object to the form of the	2	A. Yes.
3	question.	3	Q. And the priority request is requested for
4	THE WITNESS: Yes.	4	September 27, 1991, which was the filing date of the 254
5	BY MR. MAS:	5	application; correct?
6	Q. Okay. I think you can put that application	6	A. Yes.
7	aside for a bit. Maybe put it on the chair.	7	Q. Okay. Now I would like you to turn to BSX
8	A. I thought there was a rubber band.	8	404589.
9	Q. You don't need - okay. You can put the rubber	9	A. Yes.
10	band on. It's fine. And I would like you to relocate	10	Q. Do you have that before you?
11	Wight Exhibit 9, which was the PCT file history. I	11	A. Yes.
12	believe that's in the stack next to you.	12	Q. And this is a request for withdrawal of priority
13	MR. JOHNSON: You said Wight 9, the PCT?	13	claim in the PCT file; correct?
14	MR. MAS: Yes, Wight 9.	14	A. Yes.
15	THE WITNESS: Oh, there it is.	15	
16	BY MR. MAS:		Q. And referring you to the — the first paragraph,
17	Q. Now, I would like you to turn in the PCT file	16	it states, quote,
18	history to Bates numbers BSX 404593,	17 18	"Applicant respectfully requested in connection
19	MR. JOHNSON: What page? I'm sorry. I have the		with the above-identified international application
20	wrong exhibit. What number did you say?	19	the claim for priority based on U.S. patent
21	-	20	application number 07 slash 767254 filed 27 September
22	MR. MAS: Wight Exhibit 9, which is the PCT file history.	21	1991 be withdrawn under rule 90.3."
23		22	You see that?
	MR. JOHNSON: Right. And what was the Bates	23	A. Yes.
24 25	number? I'm sorry.	24	Q. And then it states, "Therefore, publication of
23	MR. AL-SALAM: You don't have that exhibit.	25	the international application under article 21 2A should
	159		161
1	This is say it again.	1	not occur until March 1994."
2	MR. MAS: Okay. Wight Exhibit 9. Why don't we	2	Do you see that?
3	turn to BSX 404591.	3	A. I do.
4	MR. JOHNSON: At least I feel a little bit less	4	Q. So in this document NeoRx is requesting that the
5	like I'm going crazy.	5	prior priority daim to the 254 application be withdrawn;
6	BY MR. MAS:	6	correct?
7	Q. Do you have that page?	7	A. Yes.
8	A. I do.	8	Q. And by doing that NeoRx is able to postpone the
9	Q. And this is a PCT request; correct?	9	publication date of the PCT application until March of
10	A. Yes.	10	1994; correct?
11	Q. And the applicant and address listed at the top	11	MR. JOHNSON: Objection to form.
12	is NeoRx Corporation. Do you see that?	12	THE WITNESS: That's the result of this, yes.
13	A. Yes.	13	BY MR. MAS:
14	Q. And the further applicants and further inventors	14	Q. Okay. If — if NeoRx had kept the priority
15	are listed as Larry or Lawrence Leroy Kunz?	15	claim to September of 1991, the application would be
16	A. Yes,	16	published much earlier; correct?
17	Q. Now, if you turn to BSX 404593, which is two	17	MR. JOHNSON: Objection, vague.
	pages later.	18	THE WITNESS: I don't remember my PCT rules, but
18	A. Yes.	19	I think so.
18 19		20	BY MR. MAS:
19	O. You see there's a signature by Michael Levine?		
19 20	Q. You see there's a signature by Michael Levine? A. Yes.	21	O Okay So by withdrawing the autoute state
19 20 21	A. Yes.	21	Q. Okay. So by withdrawing the priority claim,
19 20 21 22	A. Yes. Q. And that's a signature on behalf of applicant?	22	NeoRx is able to keep the application secret for a longer
19 20 21 22 23	A. Yes. And that's a signature on behalf of applicant? A. Yes.	22 23	NeoRx is able to keep the application secret for a longer period of time; correct?
19 20 21 22	A. Yes. Q. And that's a signature on behalf of applicant?	22	NeoRx is able to keep the application secret for a longer

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1		1 2	(The separate to sail Embre Edit Hom
2		2	2 Anna Lewak Wight dated January 10, 2003 was marked as
3	, , , , , , , , , , , , , , , , , , , ,	1 3	B Exhibit-14 for identification.)
4	successful?	1 4	A. Yes.
5	A. No.	5	Q. Do you recognize this document?
6	Q. Okay. Now, in September of 2002 were a second	6	A. Yes.
7	round of discussions begun with Boston Scientific?	7	Q. Is this a letter from you to Jan Embretson dated
8	A. Yes.	8	
9	Q. Okay. And were you involved in those	9	
10	discussions?	10	
11	A. From time to time.	11	
12	Q. Let's have the court reporter mark Exhibit 13,	12	
13	which is a one-page document bearing Bates numbers 411258.	13	· · · · · · · · · · · · · · · · · · ·
14	(Whereupon, a letter to Anna Lewak Wight from	1	the same state of the same state and
15	Jana Brusacoram dated September 8, 1998 was marked as	14	, , , , , , , , , , , , , , , , , , , ,
16	Exhibit-13 for identification.)	15	· · · · · · · · · · · · · · · · · · ·
17	·	16	e. The discourse 1991 agreement between
18	Can you identify Exhibit 13?		NeoRx and UAB and the 1993 agreement between NeoRx and
-	A. It's a letter from outside counsel about an	18	
19	issuance.	19	
20	Q. And this letter is dated September 8th, 1998;	20	4. Simple to have the court reporter mark
21	correct?	21	as Wight Exhibit 15 a document bearing Bates numbers NeoRx
22	A. Yes.	22	
23	Q. And it's addressed to you?	23	(Whereupon, a facsimile to Jan Embretson from
24	A. Yes.	24	Anna Lewak Wight dated January 16, 2003 was marked as
25	Q. And it informs you of the issuance of U.S.		Exhibit-15 for identification.)
	207		. 209
1	patent 5,811,447?	1	Do you recognize this document?
2	A. Yes.	1 2	A. Yes.
3	 It states that it will issue on September 22nd, 		A. Tes.
	Q. It states that it will issue on September 22nd,	3	
4	1998?	_	Q. Is this a letter from you to Jan Embretson dated
4 5		3	
	1998? A. Yes.	3 4	Q. Is this a letter from you to Jan Embretson dated January 16th, 2003? A. Yes.
5	1998?	3 4 5 6	 Q. Is this a letter from you to Jan Embretson dated January 16th, 2003? A. Yes. Q. And in this letter to Miss Embretson you attach
5 6 7	1998? A. Yes. Q. I'd like to hand you a copy of the 447 patent, which is Anderson Exhibit 14.	3 4 5 6 7	 Q. Is this a letter from you to Jan Embretson dated January 16th, 2003? A. Yes. Q. And in this letter to Miss Embretson you attach Dr. Anderson's assignment of his application and invention
5 6 7 8	1998? A. Yes. Q. I'd like to hand you a copy of the 447 patent, which is Anderson Exhibit 14. (Whereupon, Anderson Exhibit-14 was placed	3 4 5 6 7 8	Q. Is this a letter from you to Jan Embretson dated January 16th, 2003? A. Yes. Q. And in this letter to Miss Embretson you attach Dr. Anderson's assignment of his application and invention to the University of Alabama Research Foundation?
5 6 7 8 9	1998? A. Yes. Q. I'd like to hand you a copy of the 447 patent, which is Anderson Exhibit 14.	3 4 5 6 7 8 9	 Q. Is this a letter from you to Jan Embretson dated January 16th, 2003? A. Yes. Q. And in this letter to Miss Embretson you attach Dr. Anderson's assignment of his application and invention to the University of Alabama Research Foundation? A. Yes.
5 6 7 8 9	A. Yes. Q. I'd like to hand you a copy of the 447 patent, which is Anderson Exhibit 14. (Whereupon, Anderson Exhibit-14 was placed before the witness.) A. Yes.	3 4 5 6 7 8 9	Q. Is this a letter from you to Jan Embretson dated January 16th, 2003? A. Yes. Q. And in this letter to Miss Embretson you attach Dr. Anderson's assignment of his application and invention to the University of Alabama Research Foundation? A. Yes. Q. And you also attach the assignment of Dr. Kunz
5 6 7 8 9 0	A. Yes. Q. I'd like to hand you a copy of the 447 patent, which is Anderson Exhibit 14. (Whereupon, Anderson Exhibit-14 was placed before the witness.) A. Yes. Q. Okay. You were involved with the prosecution of	3 4 5 6 7 8 9 10	Q. Is this a letter from you to Jan Embretson dated January 16th, 2003? A. Yes. Q. And in this letter to Miss Embretson you attach Dr. Anderson's assignment of his application and invention to the University of Alabama Research Foundation? A. Yes. Q. And you also attach the assignment of Dr. Kunz with regard to his application and invention to NeoRx?
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5 6 7 8 9 0 1 2	A. Yes. Q. I'd like to hand you a copy of the 447 patent, which is Anderson Exhibit 14. (Whereupon, Anderson Exhibit-14 was placed before the witness.) A. Yes. Q. Okay. You were involved with the prosecution of the 447 patent; correct? A. To the extent I was involved in the prosecution,	3 4 5 6 7 8 9 10 11 12 13	Q. Is this a letter from you to Jan Embretson dated January 16th, 2003? A. Yes. Q. And in this letter to Miss Embretson you attach Dr. Anderson's assignment of his application and invention to the University of Alabama Research Foundation? A. Yes. Q. And you also attach the assignment of Dr. Kunz with regard to his application and invention to NeoRx? A. Yes. Q. And then there is a series of other
5 6 7 8 9 0 1 2 3	A. Yes. Q. I'd like to hand you a copy of the 447 patent, which is Anderson Exhibit 14. (Whereupon, Anderson Exhibit-14 was placed before the witness.) A. Yes. Q. Okay. You were involved with the prosecution of the 447 patent; correct? A. To the extent I was involved in the prosecution, most of it is done by outside counsel.	3 4 5 6 7 8 9 10 11 12 13 14	Q. Is this a letter from you to Jan Embretson dated January 16th, 2003? A. Yes. Q. And in this letter to Miss Embretson you attach Dr. Anderson's assignment of his application and invention to the University of Alabama Research Foundation? A. Yes. Q. And you also attach the assignment of Dr. Kunz with regard to his application and invention to NeoRx? A. Yes. Q. And then there is a series of other assignment-related documents attached to the letter?
5 6 7 8 9 0 1 2 3 4 5	A. Yes. Q. I'd like to hand you a copy of the 447 patent, which is Anderson Exhibit 14. (Whereupon, Anderson Exhibit-14 was placed before the witness.) A. Yes. Q. Okay. You were involved with the prosecution of the 447 patent; correct? A. To the extent I was involved in the prosecution, most of it is done by outside counsel. Q. You directed outside counsel with regard to the	3 4 5 6 7 8 9 10 11 12 13 14	Q. Is this a letter from you to Jan Embretson dated January 16th, 2003? A. Yes. Q. And in this letter to Miss Embretson you attach Dr. Anderson's assignment of his application and invention to the University of Alabama Research Foundation? A. Yes. Q. And you also attach the assignment of Dr. Kunz with regard to his application and invention to NeoRx? A. Yes. Q. And then there is a series of other assignment-related documents attached to the letter? A. Yes.
5 6 7 8 9 0 1 2 3 4 5 6	A. Yes. Q. I'd like to hand you a copy of the 447 patent, which is Anderson Exhibit 14. (Whereupon, Anderson Exhibit-14 was placed before the witness.) A. Yes. Q. Okay. You were involved with the prosecution of the 447 patent; correct? A. To the extent I was involved in the prosecution, most of it is done by outside counsel. Q. You directed outside counsel with regard to the prosecution of the 447 patent; correct?	3 4 5 6 7 8 9 10 11 12 13 14 15	Q. Is this a letter from you to Jan Embretson dated January 16th, 2003? A. Yes. Q. And in this letter to Miss Embretson you attach Dr. Anderson's assignment of his application and invention to the University of Alabama Research Foundation? A. Yes. Q. And you also attach the assignment of Dr. Kunz with regard to his application and invention to NeoRx? A. Yes. Q. And then there is a series of other assignment-related documents attached to the letter? A. Yes. Q. Correct?
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5 6 7 8 9 0 1 2 3 4 5 6 7 8 9	A. Yes. Q. I'd like to hand you a copy of the 447 patent, which is Anderson Exhibit 14. (Whereupon, Anderson Exhibit-14 was placed before the witness.) A. Yes. Q. Okay. You were involved with the prosecution of the 447 patent; correct? A. To the extent I was involved in the prosecution, most of it is done by outside counsel. Q. You directed outside counsel with regard to the prosecution of the 447 patent; correct? MR. JOHNSON: Objection, vague. THE WITNESS: Yes.	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q. Is this a letter from you to Jan Embretson dated January 16th, 2003? A. Yes. Q. And in this letter to Miss Embretson you attach Dr. Anderson's assignment of his application and invention to the University of Alabama Research Foundation? A. Yes. Q. And you also attach the assignment of Dr. Kunz with regard to his application and invention to NeoRx? A. Yes. Q. And then there is a series of other assignment-related documents attached to the letter? A. Yes. Q. Correct? A. Yes. Q. Let me have the court reporter mark as Wight Exhibit 16 a document bearing Bates numbers NeoRx 55884
5 6 7 8 9 0 1 2 3 4 5 6 7 8 9 0	A. Yes. Q. I'd like to hand you a copy of the 447 patent, which is Anderson Exhibit 14. (Whereupon, Anderson Exhibit-14 was placed before the witness.) A. Yes. Q. Okay. You were involved with the prosecution of the 447 patent; correct? A. To the extent I was involved in the prosecution, most of it is done by outside counsel. Q. You directed outside counsel with regard to the prosecution of the 447 patent; correct? MR. JOHNSON: Objection, vague. THE WITNESS: Yes. BY MR. MAS:	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Q. Is this a letter from you to Jan Embretson dated January 16th, 2003? A. Yes. Q. And in this letter to Miss Embretson you attach Dr. Anderson's assignment of his application and invention to the University of Alabama Research Foundation? A. Yes. Q. And you also attach the assignment of Dr. Kunz with regard to his application and invention to NeoRx? A. Yes. Q. And then there is a series of other assignment-related documents attached to the letter? A. Yes. Q. Correct? A. Yes. Q. Let me have the court reporter mark as Wight Exhibit 16 a document bearing Bates numbers NeoRx 55884 through 55 actually, the document is a six-page
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5 6 7 8 9 10 11 12 13 14 15 16 7 8 9 0 1 1 2 3 1 2 3 1 3 1 2 3 1 2 3 1 3 1 2 3 1 2 3 3 1 3 1	A. Yes. Q. I'd like to hand you a copy of the 447 patent, which is Anderson Exhibit 14. (Whereupon, Anderson Exhibit-14 was placed before the witness.) A. Yes. Q. Okay. You were involved with the prosecution of the 447 patent; correct? A. To the extent I was involved in the prosecution, most of it is done by outside counsel. Q. You directed outside counsel with regard to the prosecution of the 447 patent; correct? MR. JOHNSON: Objection, vague. THE WITNESS: Yes. BY MR. MAS: Q. Now, was the 447 patent part of NeoRx's cardiovascular portfolio? A. Yes. Q. Let me have the court reporter mark as Wight	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q. Is this a letter from you to Jan Embretson dated January 16th, 2003? A. Yes. Q. And in this letter to Miss Embretson you attach Dr. Anderson's assignment of his application and invention to the University of Alabama Research Foundation? A. Yes. Q. And you also attach the assignment of Dr. Kunz with regard to his application and invention to NeoRx? A. Yes. Q. And then there is a series of other assignment-related documents attached to the letter? A. Yes. Q. Correct? A. Yes. Q. Let me have the court reporter mark as Wight Exhibit 16 a document bearing Bates numbers NeoRx 55884 through 55 actually, the document is a six-page document, each page which is Bates numbered NeoRx 55884. (Whereupon, a fax transmission to Dr. Peter Anderson from Janet Embretson dated January 30, 2003 was
5 6 7 8 9 10 11 2 13 4 5 6 7 8 9 0 1 2 3 4	A. Yes. Q. I'd like to hand you a copy of the 447 patent, which is Anderson Exhibit 14. (Whereupon, Anderson Exhibit-14 was placed before the witness.) A. Yes. Q. Okay. You were involved with the prosecution of the 447 patent; correct? A. To the extent I was involved in the prosecution, most of it is done by outside counsel. Q. You directed outside counsel with regard to the prosecution of the 447 patent; correct? MR. JOHNSON: Objection, vague. THE WITNESS: Yes. BY MR. MAS: Q. Now, was the 447 patent part of NeoRx's cardiovascular portfolio? A. Yes.	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q. Is this a letter from you to Jan Embretson dated January 16th, 2003? A. Yes. Q. And in this letter to Miss Embretson you attach Dr. Anderson's assignment of his application and invention to the University of Alabama Research Foundation? A. Yes. Q. And you also attach the assignment of Dr. Kunz with regard to his application and invention to NeoRx? A. Yes. Q. And then there is a series of other assignment-related documents attached to the letter? A. Yes. Q. Correct? A. Yes. Q. Let me have the court reporter mark as Wight Exhibit 16 a document bearing Bates numbers NeoRx 55884 through 55 actually, the document is a six-page document, each page which is Bates numbered NeoRx 55884. (Whereupon, a fax transmission to Dr. Peter

1			
	210		212
1	A. Yes.	1	patent, then NeoRx would not be able to assign the entire
2	Q. And what is it?	2	right, title and interest to that patent to Boston
3	A. It's a letter from Jan Embretson to	3	Scientific; correct?
4	Dr. Anderson.	4	MR. AL-SALAM: Objection.
5	Q. It's dated January 30th, 2003?	5	MR. JOHNSON: Objection to form, calls for a
6	A. Yes.	6	legal conclusion.
7	Q. And what does the letter concern?	7	THE WITNESS: I believe if he was appropriately
8	A. It asks him	8	named.
9	MR. JOHNSON: Objection, lack of foundation.	9	BY MR. MAS:
10	You can go ahead.	10	Q. If Dr. Anderson was a co-inventor on the 447
11	THE WITNESS: It's a letter indicates that she	11	patent, then the University of Alabama Research Foundation
12	spoke with him, enclosed documents for changing	12	would have rights to the patent, also; correct?
13	inventorship and claims in the European patent	13	MR. JOHNSON: Objection to form, calls for a
14	application.	14	legal conclusion.
15	BY MR. MAS:	15	THE WITNESS: If he was a co-inventor, yes.
16	Q. Now, this letter to Dr. Anderson is requesting	16	BY MR. MAS:
17	that Dr. Anderson agree to be removed as an inventor on	17	Q. Okay. Now, he was named on the 447 patent;
18	the 447 patent; correct?	18	correct?
19	MR. JOHNSON: Objection to form.	19	A. Yes, originally.
20	THE WITNESS: Yes.	20	Q. Okay.
21	BY MR. MAS:	21	But so were a whole slew of inventors who don't
22	Q. Okay. Now, at the time you wrote this letter	22	belong there.
23	and by you, I mean NeoRx wrote this letter to	23	Q. Now, in January of 2003 when you asked
24	Dr. Anderson, NeoRx was in discussions with Boston	_	Dr. Anderson — A. Uh-huh.
25	Scientific concerning the cardiovascular portfolio;	25	A. Oli-fidil.
100	211		213
1	correct?	1	Q to be taken off the patent, what did he say?
2	MR. JOHNSON: Objection to form, lack of	2	MR. AL-SALAM: Objection, lack of foundation.
3	foundation.	3	Did you say what she asked him?
4	THE WITNESS: Yes, I think we were in	4	BY MR. MAS:
5	discussions. I don't know	5	Q. No. When Dr. Anderson was asked to agree to be
6	BY MR. MAS:	6	taken off the 447 patent, what was his response?
7	Q. Well, I think	7	MR. AL-SALAM: Lack of foundation.
8	A. Yes, it says that we sent the portfolio.	8	MD TOUNCON, Objection to forms
		۰	MR. JOHNSON: Objection to form.
9	Q. Yes, in September of 2002; correct?	9	THE WITNESS: He didn't respond to me.
1			•
9	Q. Yes, in September of 2002; correct?A. Right.Q. Now, if Dr. Anderson remained on the 447 patent,	9	THE WITNESS: He didn't respond to me.
9 10	Q. Yes, in September of 2002; correct? A. Right.	9 10	THE WITNESS: He didn't respond to me. BY MR. MAS:
9 10 11	Q. Yes, in September of 2002; correct?A. Right.Q. Now, if Dr. Anderson remained on the 447 patent,	9 10 11	THE WITNESS: He didn't respond to me. BY MR. MAS: Q. Okay.
9 10 11 12	 Q. Yes, in September of 2002; correct? A. Right. Q. Now, if Dr. Anderson remained on the 447 patent, NeoRx would not be able to assign the entire right, title 	9 10 11 12	THE WITNESS: He didn't respond to me. BY MR. MAS: Q. Okay. A. Specifically.
9 10 11 12 13	Q. Yes, in September of 2002; correct? A. Right. Q. Now, if Dr. Anderson remained on the 447 patent, NeoRx would not be able to assign the entire right, title and interest to that patent to Boston Scientific; correct?	9 10 11 12 13	THE WITNESS: He didn't respond to me. BY MR. MAS: Q. Okay. A. Specifically. Q. Who did he respond to?
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9 10 11 12 13 14 15 16 17	Q. Yes, in September of 2002; correct? A. Right. Q. Now, if Dr. Anderson remained on the 447 patent, NeoRx would not be able to assign the entire right, title and interest to that patent to Boston Scientific; correct? MR. JOHNSON: Objection to form, calls for a legal conclusion. THE WITNESS: If he remained on the patent? I'm trying to recall the chain for these assignments. BY MR. MAS: Q. Well, do you see on the face of the 447 patent	9 10 11 12 13 14 15 16 17 18 19 20	THE WITNESS: He didn't respond to me. BY MR. MAS: Q. Okay. A. Specifically. Q. Who did he respond to? MR. JOHNSON: Objection to form. THE WITNESS: I believe he responded to Miss Embretson. BY MR. MAS: Q. Okay. And what was his response? A. He refused the sign the document. Q. Okay. Now, so he refused to be taken off of the
9 10 11 12 13 14 15 16 17 18 19 20 21	Q. Yes, in September of 2002; correct? A. Right. Q. Now, if Dr. Anderson remained on the 447 patent, NeoRx would not be able to assign the entire right, title and interest to that patent to Boston Scientific; correct? MR. JOHNSON: Objection to form, calls for a legal conclusion. THE WITNESS: If he remained on the patent? I'm trying to recall the chain for these assignments. BY MR. MAS: Q. Well, do you see on the face of the 447 patent A. Uh-huh.	9 10 11 12 13 14 15 16 17 18 19 20 21	THE WITNESS: He didn't respond to me. BY MR. MAS: Q. Okay. A. Specifically. Q. Who did he respond to? MR. JOHNSON: Objection to form. THE WITNESS: I believe he responded to Miss Embretson. BY MR. MAS: Q. Okay. And what was his response? A. He refused the sign the document. Q. Okay. Now, so he refused to be taken off of the 447 patent as a co-inventor; correct?
9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q. Yes, in September of 2002; correct? A. Right. Q. Now, if Dr. Anderson remained on the 447 patent, NeoRx would not be able to assign the entire right, title and interest to that patent to Boston Scientific; correct? MR. JOHNSON: Objection to form, calls for a legal conclusion. THE WITNESS: If he remained on the patent? I'm trying to recall the chain for these assignments. BY MR. MAS: Q. Well, do you see on the face of the 447 patent A. Uh-huh. Q Dr. Anderson is listed as one of the	9 10 11 12 13 14 15 16 17 18 19 20 21 22	THE WITNESS: He didn't respond to me. BY MR. MAS: Q. Okay. A. Specifically. Q. Who did he respond to? MR. JOHNSON: Objection to form. THE WITNESS: I believe he responded to Miss Embretson. BY MR. MAS: Q. Okay. And what was his response? A. He refused the sign the document. Q. Okay. Now, so he refused to be taken off of the 447 patent as a co-inventor; correct? MR. JOHNSON: Objection to form.
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9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q. Yes, in September of 2002; correct? A. Right. Q. Now, if Dr. Anderson remained on the 447 patent, NeoRx would not be able to assign the entire right, title and interest to that patent to Boston Scientific; correct? MR. JOHNSON: Objection to form, calls for a legal conclusion. THE WITNESS: If he remained on the patent? I'm trying to recall the chain for these assignments. BY MR. MAS: Q. Well, do you see on the face of the 447 patent A. Uh-huh. Q Dr. Anderson is listed as one of the	9 10 11 12 13 14 15 16 17 18 19 20 21 22	THE WITNESS: He didn't respond to me. BY MR. MAS: Q. Okay. A. Specifically. Q. Who did he respond to? MR. JOHNSON: Objection to form. THE WITNESS: I believe he responded to Miss Embretson. BY MR. MAS: Q. Okay. And what was his response? A. He refused the sign the document. Q. Okay. Now, so he refused to be taken off of the 447 patent as a co-inventor; correct? MR. JOHNSON: Objection to form. THE WITNESS: He wouldn't sign the document;

54 (Pages 210 to 213)

1			
	214		216
1	Q. Now, why was all this done five years after the	1	A. I'm sorry.
2	447 patent had issued?	2	Q. At no time prior to January of 2003 did NeoRx
3	MR. JOHNSON: Objection, calls for speculation,	3	attempt to remove Dr. Anderson from the 447 patent;
4	form.	4	correct?
5	THE WITNESS: In preparation for licensing or	5	A. I don't know. I know there were petitions filed
6	sale of the portfolios we looked at a number of things in	6	in several of the cases prior to this time. I don't know
7	preparing the files for diligence and noted that in a	7	if it was in this case.
8	number of instances, and this case was one of them, there	8	Q. Okay. But to your knowledge, the patent office
9	was improper inventorship which had carried forward from	9	had not removed Dr. Anderson from the 447 patent
10	earlier applications. For example, in this case there	10	previously; right?
11	were seven inventors that most of which did not belong on	11	A. As far as I know, no.
12	this case.	12	Q. Let me hand you a copy of what's been previously
13	BY MR. MAS:	13	been marked as Anderson Exhibit 13.
14	Q. Now, Dr. Anderson didn't believe he was an	14	(Whereupon, Anderson Exhibit-13 was placed
15 16	improper inventor on the 447 patent; correct?	15	1
17	MR. AL-SALAM: Objection, lack of foundation, calls for speculation.	16	Do you recognize Anderson Exhibit 13?
18	· · · · · · · · · · · · · · · · · · ·	17	A. It's the response from Dr. Anderson to Jan
19	MR. JOHNSON: Objection to form.	18	Embretson.
20	THE WITNESS: I can't tell you what Dr. Anderson said. I can tell you that he had not signed the petition.	19	Q. Okay. Were you provided a copy of this previous
21	BY MR. MAS:	20	to this deposition?
22	Q. Now, the reason that NeoRx was seeking to remove	21	A. No.
23			Q. Miss Embretson did not send you a copy of this
24	preparing to sell these patents to Boston Scientific:	24	response?
25	correct?	25	A. You mean not in preparation, no. Yes, I believe
		23	she sent me copy.
	215		217
1			
1	MR. JOHNSON: Objection, mischaracterization.	1	
1 2	MR. JOHNSON: Objection, mischaracterization. THE WITNESS: We were attempting to correct	1 2	Q. And you're aware that in this letter to
	THE WITNESS: We were attempting to correct		Q. And you're aware that in this letter to Miss Embretson Dr. Anderson stated that, quote, "Some of
2		2	Q. And you're aware that in this letter to Miss Embretson Dr. Anderson stated that, quote, "Some of the primary claims are the direct result of my input.
2	THE WITNESS: We were attempting to correct improper inventorship on certain of the patents where it	2	Q. And you're aware that in this letter to Miss Embretson Dr. Anderson stated that, quote, "Some of
2 3 4 5 6	THE WITNESS: We were attempting to correct improper inventorship on certain of the patents where it had been mistakenly carried forward from an earlier case such as this case. BY MR. MAS:	2 3 4	Q. And you're aware that in this letter to Miss Embretson Dr. Anderson stated that, quote, "Some of the primary claims are the direct result of my input. This claim would not have been possible without my direct
2 3 4 5 6 7	THE WITNESS: We were attempting to correct improper inventorship on certain of the patents where it had been mistakenly carried forward from an earlier case such as this case. BY MR. MAS: Q. Okay. NeoRx had been attempting to license or	2 3 4 5	Q. And you're aware that in this letter to Miss Embretson Dr. Anderson stated that, quote, "Some of the primary claims are the direct result of my input. This claim would not have been possible without my direct involvement and scientific expertise."
2 3 4 5 6 7 8	THE WITNESS: We were attempting to correct improper inventorship on certain of the patents where it had been mistakenly carried forward from an earlier case such as this case. BY MR. MAS: Q. Okay. NeoRx had been attempting to license or assign its cardiovascular portfolio for years before it	2 3 4 5 6	Q. And you're aware that in this letter to Miss Embretson Dr. Anderson stated that, quote, "Some of the primary claims are the direct result of my input. This claim would not have been possible without my direct involvement and scientific expertise." Do you see that?
2 3 4 5 6 7 8 9	THE WITNESS: We were attempting to correct improper inventorship on certain of the patents where it had been mistakenly carried forward from an earlier case such as this case. BY MR. MAS: Q. Okay. NeoRx had been attempting to license or assign its cardiovascular portfolio for years before it finally struck a deal with Boston; correct?	2 3 4 5 6 7	Q. And you're aware that in this letter to Miss Embretson Dr. Anderson stated that, quote, "Some of the primary claims are the direct result of my input. This claim would not have been possible without my direct involvement and scientific expertise." Do you see that? A. Yes. Q. And he's referring to the four claims of the 447 patent?
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	218		Q. And then he states, "I believe this should
1	Q. And what has it decided?	1	
2	A. Dr. Anderson is not an inventor on this	2	address your questions regarding inventorship."
1	application. Yes, he is not.	3	A. Yes.
4	Q. Okay. BS Boston Scientific expressed a	4	Q. Do you see that? A. Uh-huh.
1	concern regarding the inventorship of the 447 patent to	5 6	O. So Boston was concerned about the inventorship
1	NeoRx; correct?		-
7	MR. JOHNSON: Objection to form, foundation.	7 8	on the 447 patent? MR. AL-SALAM: Objection, lack of foundation.
8	THE WITNESS: Of the 447?	9	THE WITNESS: I'm not sure I know. He obviously
9	BY MR. MAS:	10	answered a question about it, but
10	Q. Yes.		BY MR. MAS:
11	A. Actually, I'm not sure that they specifically	11	Q. And then at the bottom of the page is the e-mail
	were concerned about this. I'm not sure.		from Scott Talbot at Boston to Jim Lisbakken. Do you see
13	Q. Let me hand you a copy of an exhibit I'll mark	13	that?
	as Wight Exhibit 17.	14	
15	(Whereupon, an e-mail from James Lisbakken to	15 16	A. Yes. Q. And again, this e-mail regards the 451 and 793
	Scott Talbot sent March 26, 2003 was marked as Exhibit-17	17	applications and U.S. patent 5,811,447. You see that?
1	for identification.)	18	A. Uh-huh.
18	Do you have that document in front of you?	19	Q. And Scott Talbot states to Jim Lisbakken, quote,
19	A. Uh-huh.	20	"Can you please confirm that all three of these are
20	Q. And do you see the e-mail at the top of this	21	omitted because inventorship was corrected to exclude any
21	page? A. Uh-huh.	22	Cambridge inventors and provide documentation of that
23	O. And it's from Jim Lisbakken to Scott Talbot?	23	change."
24	A. Uh-huh.	24	Do you see that?
25	Q. On March 26th, 2003?	25	A. Yes.
-		_	
	219		221
1	A. Yes.	1	Q. And so Scott is again inquiring as to the
2	Q. And you're copied on this e-mail?	2	inventorship of the 447 patent?
3	A. Yes.	3	MR. JOHNSON: Objection to form.
4	Q. And the e-mail is from Jim Lisbakken to Scott	4	THE WITNESS: Okay.
5	Bluni at Boston Scientific; correct?	6	MR. JOHNSON: Lack of foundation. THE WITNESS: Yes.
6	A. Yes.	7	BY MR. MAS:
7	MR. JOHNSON: Objection, mischaracterization. BY MR. MAS:	8	Q. So as of January 30th, 2003, Dr. Anderson would
8	21.112.112.	و ا	not agree to be removed as a co-inventor on the 447
9	Q. Actually, Scott Talbot?	10	patent; correct?
10	A. Yeah. I'm sorry; correct. Q. And do you see it says, Scott, "I understand	11	A. Yes.
11	that NeoRx's outside patent counsel has forwarded to you	12	Q. Now, in April of 2003 NeoRx entered an agreement
	the inventorship change information regarding the 447	13	with Boston Scientific relating to its cardiovascular
	case"?	14	portfolio; correct?
15	A. Uh-huh, yes.	15	A. Correct.
16	O. Who's Scott Talbot?	16	Q. And in that agreement NeoRx assigned to Boston
17	A. He was I believe counsel for Boston Scientific.	17	Scientific the Kunz chain of patents; correct?
18	O. Okay. And then there's then it reads,	18	A. Yes.
19	"Outside patent counsel tells me the following	19	Q. Okay. Now, did NeoRx ever inform the University
20	with respect to your questions regarding the two	20	
21	applications. A, the 447 patent issued out of the	21	Boston Scientific a patent on which Dr. Anderson was named
22	793 application that you cited, and then B, the 451	22	as a co-inventor?
23	application is the abandoned parent of the 793	23	A. Not to my knowledge.
24	application."	24	Q. Okay. Yet in the agreement that NeoRx reached
25	A. Uh-huh.	1	with Boston Scientific it did, in fact, assign the 447
		Ĩ	

56 (Pages 218 to 221)

NEORX

NeoRx Corporation 410 West Harrison Scaule, WA 98119-4007 206-281-7001 Fax 206-284-7112

February 19, 1993

Ms. Lucy Hicks
The UAB Research Foundation
113 Jordan Hall
1825 University Boulevard
UAB Station
Birmingham, Alabama 35294-2010

Re: Patent Applications - "Therapeutic Inhibitor of Vascular Smooth Muscle Cells"

Dear Ms. Hicks:

Pursuant to our discussion earlier today, enclosed please find the following documents:

- * Parent application USSN 767,254, filed September 27, 1991 (Kunz and Anderson)
- * CIP filed as PCT, designating US, filed September 25, 1992 (Kunz)
- * US CIP of CIP, filed January 28, 1993 (Kunz and Klein)

I understand that the second and third documents will be treated as NeoRx Confidential Information, and that, upon completion of this inventorship analysis, these documents will be retained in your Legal Department or destroyed. The first document (joint invention) is provided for your reference and files.

Please contact me if I can help distill these inches of paper to a manageable form. My direct number is (206) 286-2525, if either you or Dr. Anderson has any questions.

Very truly yours,

Debra K. Leith, J.D., Ph.D.

Director, Intellectual Property

cc: R. Schroff

L. Kunz

NeoRx 100017

HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY

Date 1-6-05 Exhibit # 13
Case CORDIS N DOSON SCHENT FRE
Deponent L YCLUM Z

Reporter TIA REIDT

Naegeli Reporting Corporation (800) 528-3335 FAX (503) 227-7123

25

I believe I did. I don't really remember the

receive royalties or high royalties and still have anything left to warrant us spending money to develop the products. Turning to the second page of the Exhibit 45, Q.

it's in the second paragraph. And in the middle of that second paragraph, "In addition," the sentence says, "the current agreement covers only conjugates."

10 Are you referring to the agreement that we discussed as Exhibit 59? 11

12 MR. MELORO: You should take a look at 59 if 13 she's going to ask.

THE WITNESS: (Witness complies.)

15 It would appear that that's what I was

16 referencing, yes.

9

14

17 BY MS. McNICHOLAS:

18 And do you recall that I asked you a question 19 when we were discussing Exhibit 59 as to whether the 20 agreement covered -- was limited to conjugates? Does this 21 statement in Exhibit 45 indicate that the agreement, at

22 least in your view as stated here, did only cover

conjugates?

24 Does it appear from what I wrote here that 25 that's what I believed at the time?

products covered, as you proposed?

I don't remember what we did.

Do you recall who was involved in the negotiation of the revised or modified agreement?

It's obvious from looking at these notes that I was involved. Who else was involved other than myself, Roozen and probably Hicks. I don't remember.

10 The date of this letter is June 14th, 1993, 11 and you've signed the letter with the title "vice 12 president and general manager of cardiovascular products." 13 There was -- was there a time in 1993 that

14 your position changed, to take on the title of vice president and general manager of cardiovascular products?

16 As we discussed before, there was a time in

17 which my title changed. I don't remember specifically when that title change was. From that document we were

looking at, it would certainly indicate the -- that patent

document would indicate that that's probably when we 21 changed the title.

22

MS. McNICHOLAS: I'd like to mark as Schroff 23 Exhibit 63 a document bearing Bates Nos. NeoRX 100026

24 through -37.

25 (Whereupon, a 12-page Agreement was marked

28 (Pages 290 to 293)

RESEARCH FOUNDATION April 15, 1993

VIA FAX

Deborah K. Leath, J.D., Ph. D. Director, Intellectual Property NeoRx Corporation 410 West Harrison Seattle, Washington 98119-4007

He: Parent Application USSN 767,254 Filed September 27, 1991 Inventors: Kunz and Anderson

CIP Filed as a PCT, designating U.S. filed September 25, 1992 Inventor. Kunz

U.S. CIP of CIP Filed January 28, 1993 Inventors: Kunz and Klein

Dear Dr. Leath:

Parent Application USSN 767,254 filed September 27, 1991, specifically covers the utilization of a therapeutic conjugate which is capable of binding to the cell surface of vascular smooth musde cells in mammallan host resulting in inhibition of restenosis. The subsequently filed CIP's, i.e. Kunz and Klein patent applications 2 and 3 referenced above, claim the same invention as the parent application (i.e. the utilization of a therapeutic conjugate which is capable of binding to the cell surface of vascular smooth muscle cells in mammallan host resulting in inhibition of restenosis) as well as the methods of administering a sustained released dosage of a therapeutic agent.

As stated in the Preliminary Disclosure of the invention document, as submitted by Dr. Kunz on January 16, 1991, Dr. Anderson conceived the use of the NeoRx immunoconjugates as a form of administering therapeutic agents to suppress the vascular smooth muscle proliferation as a result of angioplasty trauma. Also disclosed in this document, Dr. Kunz and Dr. Anderson discussed the use of modified perforated balloon catheters to administer or deliver the immunoconjugates developed by NeoRx to the site of the angioplasty trauma. Dr. Anderson in subsequent conversations with Dr. Kunz, discussed and disclosed the use of microencapsulation and methods of controlled release of therapeutic agents to control restenosis in the vascular wall.

NeoRx 100020

HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY

The University of Alabama at Birmingham 113 Martiner Jordan Hall • 1825 University Boulevard Birmingham, Alabama 35294-2010 • (205) 934-9911 • FAX (205) 934-1221

Dr. Daborah K. Leath April 15, 1993 Page Two

in conclusion, Dr. Anderson in conjunction with Dr. Kunz were the persons who conceived the invention of using NeoRx antibodies either coupled directly to a therapeutic agent or bound to the time release formulation of the therapeutic agent to target the therapeutic agent to the site of vascular trauma or disease to inhibit restensis. Dr. Anderson also contributed to the claims relating to the use of a catheter to accomplish administration of the therapeutic agent/therapeutic conjugate.

It is the opinion of the UAB Research Foundation that Dr. Anderson should be included as an inventor on the subsequent filed patent applications, patent applications 2 and 3 as referenced above. I will gladly welcome any further discussion you may have regarding the specific inventive contributions Dr. Anderson contributed to each of the claims as set forth in patent applications 2 and 3. If you have any further questions, please feel free to contact our office.

With Warmest Regards

Lucy C. Hicks, Esq. Program Manager II -Patents and Licenses

LCH/sa c: Dr. Kenneth J. Roozen Dr. Peter Anderson

NeoRx 100021

HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY

			1
1	IN THE UNITED STATES DISTRICT COURT		
2	FOR THE DISTRICT OF DELAWARE		
3			
4	BOSTON SCIENTIFIC SCIMED, INC.;		
5	and BOSTON SCIENTIFIC CORPORATION,	•	
6		HICHLY CONCIDENTIAL	
7	Plaintiff,	HIGHLY CONFIDENTIAL	
8	vs.	Case No. 03-283-SLR	
9			
10	CORDIS CORPORATION; and JOHNSON & JO	DHNSON,	
11	INC.,	•	
12		·	
13	Defendants.		
13 14	Defendants.	-	
0	Defendants.	-	
14	Defendants.	-	
14 15	Defendants. (Caption continued on the following page 1)	- page.)	
14 15 16		- page.)	
14 15 16		- page.)	
14 15 16 17		- page.)	
14 15 16 17 18		page.)	
14 15 16 17 18 19		page.)	
14 15 16 17 18 19 20 21		- page.)	
14 15 16 17 18 19 20 21			

	2		4
1	BOSTON SCIENTIFIC SCIMED, INC.;	1	APPEARANCES CONTINUED
2	and BOSTON SCIENTIFIC CORPORATION,	2	
3		. 3	KENYON & KENYON
4	Plaintiff,	4	BY: THOMAS J. MELORO
5	vs. Case No. 03-1138-SLR	5	Attorney at Law
6		6	One Broadway
7	CORDIS CORPORATION; JOHNSON & JOHNSON,	7	New York, NY 10004-1050
8	INC.; GUIDANT CORPORATION; GUIDANT	8	(212) 425-7200
g	SALES CORPORATION; and ADVANCED	9	(212) 425-5288 FAX
10	CARDIOVASCULAR SYSTEMS, INC.,	10	Tmeloro@kenyon.com
11		11	Appearing on behalf of Boston Scientific Scimed and Boston
12	Defendants.	12	Scientific Corporation
13		13	
14 .	DEPOSITION OF LAWRENCE L. KUNZ, Ph.D., VOLUME I.	14	KENYON & KENYON
15	Taken on behalf of the Defendants	15	BY: MICHAEL JOHNSON
16	January 6, 2005	16	Attorney at Law
17		17	One Broadway
18	BE IT REMEMBERED THAT, pursuant to the Washington Rules of	18	New York, NY 10004-1050
19	Civil Procedure, the deposition of LAWRENCE L. KUNZ,	19	(212) 425-7200
20	Ph.D., VOLUME I, was taken before Tia B. Reidt, #2798, a	20	(212) 425-5288 FAX
21	Certified Shorthand Reporter, and a Notary Public for the	21	Mjohnson@kenyon.com
22		22	Appearing on behalf of Boston Scientific Scimed and Boston
23	hour of 9:41 a.m, the proceedings being reported at	23	Scientific Corporation
24	Perkins Coie, 1201 Third Avenue, Suite 4800, Seattle,	24	
25	Washington.	25	
 -			·
	3		5
1	APPEARANCES	1	APPEARANCES CONTINUED
2		2	
3	PATTERSON, BELKNAP, WEBB & TYLER, LLP	3	PERKINS COIE, LLP
4	BY: MICHAEL TIMMONS	4	BY: RAMSEY M. AL-SALAM
5	Attorney at Law	5	Attorney at Law
6	1133 Avenue of the Americas	6	1201 Third Avenue, Suite 4800
7	New York, NY 10036-6710		
		7	Seattle, WA 98101
8	(212) 336-2457	8	Seattle, WA 98101 (206) 264-6385
9	(212) 336-2457 (212) 336-2457 Fax	8 9	Seattle, WA 98101 (206) 264-6385 (206) 583-8500 Fax
9 10	(212) 336-2457 (212) 336-2457 Fax Mjtimmons@pbwt.com	8 9 10	Seattle, WA 98101 (206) 264-6385
9 10 11	(212) 336-2457 (212) 336-2457 Fax Mjtimmons@pbwt.com Appearing on behalf of Cordis and Johnson & Johnson	8 9 10 11	Seattle, WA 98101 (206) 264-6385 (206) 583-8500 Fax Appearing on behalf of NeoRX and the witness
9 10 11 12	(212) 336-2457 (212) 336-2457 Fax Mjtimmons@pbwt.com Appearing on behalf of Cordis and Johnson & Johnson	8 9 10 11 12	Seattle, WA 98101 (206) 264-6385 (206) 583-8500 Fax Appearing on behalf of NeoRX and the witness ALSO PRESENT:
9 10 11 12 13	(212) 336-2457 (212) 336-2457 Fax Mjtimmons@pbwt.com Appearing on behalf of Cordis and Johnson & Johnson McANDREWS, HELD & MALLOY, LTD	8 9 10 11 12 13	Seattle, WA 98101 (206) 264-6385 (206) 583-8500 Fax Appearing on behalf of NeoRX and the witness ALSO PRESENT: CASEY MULDOON,
9 10 11 12 13 14	(212) 336-2457 (212) 336-2457 Fax Mjtimmons@pbwt.com Appearing on behalf of Cordis and Johnson & Johnson McANDREWS, HELD & MALLOY, LTD BY: EDWARD MAS, II	8 9 10 11 12 13 14	Seattle, WA 98101 (206) 264-6385 (206) 583-8500 Fax Appearing on behalf of NeoRX and the witness ALSO PRESENT: CASEY MULDOON,
9 10 11 12 13 14 15	(212) 336-2457 (212) 336-2457 Fax Mjtimmons@pbwt.com Appearing on behalf of Cordis and Johnson & Johnson McANDREWS, HELD & MALLOY, LTD BY: EDWARD MAS, II Attorney at Law	8 9 10 11 12 13 14 15	Seattle, WA 98101 (206) 264-6385 (206) 583-8500 Fax Appearing on behalf of NeoRX and the witness ALSO PRESENT: CASEY MULDOON, Videographer, Naegeli Reporting Corporation
9 10 11 12 13 14 15 16	(212) 336-2457 (212) 336-2457 Fax Mjtimmons@pbwt.com Appearing on behalf of Cordis and Johnson & Johnson McANDREWS, HELD & MALLOY, LTD BY: EDWARD MAS, II Attorney at Law 500 West Madison Street, 34th Floor	8 9 10 11 12 13 14 15 16	Seattle, WA 98101 (206) 264-6385 (206) 583-8500 Fax Appearing on behalf of NeoRX and the witness ALSO PRESENT: CASEY MULDOON, Videographer, Naegeli Reporting Corporation
9 10 11 12 13 14 15 16 17	(212) 336-2457 (212) 336-2457 Fax Mjtimmons@pbwt.com Appearing on behalf of Cordis and Johnson & Johnson McANDREWS, HELD & MALLOY, LTD BY: EDWARD MAS, II Attorney at Law 500 West Madison Street, 34th Floor Chicago, IL 60661	8 9 10 11 12 13 14 15 16	Seattle, WA 98101 (206) 264-6385 (206) 583-8500 Fax Appearing on behalf of NeoRX and the witness ALSO PRESENT: CASEY MULDOON, Videographer, Naegeli Reporting Corporation
9 10 11 12 13 14 15 16 17 18	(212) 336-2457 (212) 336-2457 Fax Mjtimmons@pbwt.com Appearing on behalf of Cordis and Johnson & Johnson McANDREWS, HELD & MALLOY, LTD BY: EDWARD MAS, II Attorney at Law 500 West Madison Street, 34th Floor Chicago, IL 60661 (312) 775-8136	8 9 10 11 12 13 14 15 16 17 18	Seattle, WA 98101 (206) 264-6385 (206) 583-8500 Fax Appearing on behalf of NeoRX and the witness ALSO PRESENT: CASEY MULDOON, Videographer, Naegeli Reporting Corporation
9 10 11 12 13 14 15 16 17 18	(212) 336-2457 (212) 336-2457 Fax Mjtimmons@pbwt.com Appearing on behalf of Cordis and Johnson & Johnson McANDREWS, HELD & MALLOY, LTD BY: EDWARD MAS, II Attorney at Law 500 West Madison Street, 34th Floor Chicago, IL 60661 (312) 775-8136 (312) 444-0498 Fax	8 9 10 11 12 13 14 15 16 17 18	Seattle, WA 98101 (206) 264-6385 (206) 583-8500 Fax Appearing on behalf of NeoRX and the witness ALSO PRESENT: CASEY MULDOON, Videographer, Naegeli Reporting Corporation
9 10 11 12 13 14 15 16 17 18 19 20	(212) 336-2457 (212) 336-2457 Fax Mjtimmons@pbwt.com Appearing on behalf of Cordis and Johnson & Johnson McANDREWS, HELD & MALLOY, LTD BY: EDWARD MAS, II Attorney at Law 500 West Madison Street, 34th Floor Chicago, IL 60661 (312) 775-8136 (312) 444-0498 Fax Emas@mhmlaw.com	8 9 10 11 12 13 14 15 16 17 18 19 20	Seattle, WA 98101 (206) 264-6385 (206) 583-8500 Fax Appearing on behalf of NeoRX and the witness ALSO PRESENT: CASEY MULDOON, Videographer, Naegeli Reporting Corporation
9 10 11 12 13 14 15 16 17 18 19 20 21	(212) 336-2457 (212) 336-2457 Fax Mjtimmons@pbwt.com Appearing on behalf of Cordis and Johnson & Johnson McANDREWS, HELD & MALLOY, LTD BY: EDWARD MAS, II Attorney at Law 500 West Madison Street, 34th Floor Chicago, IL 60661 (312) 775-8136 (312) 444-0498 Fax Emas@mhmlaw.com Appearing on behalf of Guidant	8 9 10 11 12 13 14 15 16 17 18 19 20 21	Seattle, WA 98101 (206) 264-6385 (206) 583-8500 Fax Appearing on behalf of NeoRX and the witness ALSO PRESENT: CASEY MULDOON, Videographer, Naegeli Reporting Corporation
9 10 11 12 13 14 15 16 17 18 19 20 21 22	(212) 336-2457 (212) 336-2457 Fax Mjtimmons@pbwt.com Appearing on behalf of Cordis and Johnson & Johnson McANDREWS, HELD & MALLOY, LTD BY: EDWARD MAS, II Attorney at Law 500 West Madison Street, 34th Floor Chicago, IL 60661 (312) 775-8136 (312) 444-0498 Fax Emas@mhmlaw.com Appearing on behalf of Guidant	8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Seattle, WA 98101 (206) 264-6385 (206) 583-8500 Fax Appearing on behalf of NeoRX and the witness ALSO PRESENT: CASEY MULDOON, Videographer, Naegeli Reporting Corporation
9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	(212) 336-2457 (212) 336-2457 Fax Mjtimmons@pbwt.com Appearing on behalf of Cordis and Johnson & Johnson McANDREWS, HELD & MALLOY, LTD BY: EDWARD MAS, II Attorney at Law 500 West Madison Street, 34th Floor Chicago, IL 60661 (312) 775-8136 (312) 444-0498 Fax Emas@mhmlaw.com Appearing on behalf of Guidant	8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Seattle, WA 98101 (206) 264-6385 (206) 583-8500 Fax Appearing on behalf of NeoRX and the witness ALSO PRESENT: CASEY MULDOON, Videographer, Naegeli Reporting Corporation
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126 128 the inventors were of any of the inventions that were 1 A. Oh. 28. 2 submitted to the US Patent Office? 2 -- if you'd start at 28, there's a sentence Q. MR. AL-SALAM: Well, I think that's getting a 3 3 that starts "Other examples." little too close to the attorney-client privilege. I'll 4 (Witness complies.) A. instruct him not to answer. 5 Yes, "Other examples." 6 MR. TIMMONS: Well, I'm not asking for the -6 If you could read starting with "Other 7 I'm asking -- it's a "yes" or "no" question, whether or 7 examples" on to the end of that paragraph and, again, 8 not anything else that you need to feel comfortable about 9 MR. AL-SALAM: I know, but it's a specific that, I'd like to ask you some questions about that 10 question. I mean, you know, what I think is if you talk 10 portion, please. the general nature or subject matter of discussion, but 11 (Witness complies.) A. 12 when you're saying did they ask you this specific 12 Yes. 13 question, then I think at that point you're getting into 13 Ready? Okay. My question is, on Line 35 or so, it talks about TGF-alpha or -beta? 14 the attorney-client privilege. 14 15 MR. TIMMONS: Well, let me try to parse that, 15 Do you see that? . because what I've asked him is whether or not they ever 16 16 A. Mm-hm. 17 approached him to find out the inventors of any 17 What effect did TGF-alpha or -beta, to your 18 applications. I've not asked him if they went to him on understanding, have on the proliferation of smooth muscle 18 19 the PCT application and said "Should Anderson be that 19 cells in January of 1993? 20 20 A. I don't have a recollection of what was --21 My question is, generally: Did the legal 21 what the status of that was. 22 department ever seek your advice or input as to the 22 Okay. If you could read this section and inventors of any of the applications that were sent to the tell me whether or not you were trying to increase or 24 US Patent Office. decrease the activity of TGF-beta in this section of your MR. AL-SALAM: I'll allow you to ask that 25 25 patent application? 127 129 1 auestion. MR. MELORO: Objection to the form of the MR. TIMMONS: Thank you. 2 2 question. 3 MR. MELORO: And I'll object to the form of it. 3 THE WITNESS: It merely means, I think, to MR. TIMMONS: That's the least of my problems. modulate it, whether it's increase it or decrease it. It 5 Can you read that one back, what I said to may mean to stabilize it. So it could be -- it could be 6 either. And I wouldn't know from reading -- I mean, I (Whereupon, the previous question was read back can't remember back what we were thinking at that time. 7 8 by the court reporter, as requested.) 8 BY MR. TIMMONS: 9 MR. MELORO: Objection to form. Okay. Were you looking at TGF-beta 9 O. 10 THE WITNESS: They never asked me for my advice 10 personally at that time? 11 of who the inventors were going to be. They asked me to 11 No. That was -- we were not doing 12 answer questions on who did what and they would determine experiments on it at that time. We were considering 13 the inventorship. different mechanisms of action that might be applicable to 14 BY MR. TIMMONS: 14 what we were trying to do. 15 Thank you. Did you take the TGF-alpha or -beta out of 15 16 If you could, in Klein Exhibit 11, turn to 16 the literature that was existent at that time? 17 Tab 1, please, and then go to Page 26 of the application. 17 MR. MELORO: Objection to form. 18 please. It's at the top. 18 THE WITNESS: I don't recall. 19 (Witness complies.) 19 BY MR. TIMMONS: 20 Okay. At the bottom of Page 26 at Line 28 or 20 Don't close it up. Q. 21 so, there's a sentence that starts "Other examples of 21 Yeah. 22 cytostatic agents." 22 Go on to the next page where it talks about. 23 Do you see that? 23 at Line 21 or so, "representative examples of cytoskeletal 24 A. Mine goes to 36. 24 inhibitors." 25 Q. Yeah. But on Line 28 --25 Do you see that?

	130		132
1		1	smooth muscle cells?
2	Q. And if you remember before, we went through	2	A. Under certain circumstances.
3	another section of an earlier application that talked	3	Q. Okay.
4	about representative examples of cytoskeletal inhibitors.	4	MR. TIMMONS: Let's mark as Kunz Exhibit 14 a
5	Now, this section includes cytochalasins	5	letter from Lucy Hicks at UAB Research Foundation to Debra
6	and taxol, correct?	6	Leith at NeoRx Corporation dated April 15th, 1993, NeoRx
7	A. Correct.	7	100020 through -21.
8	Q. Who identified cytochalasins as a	8	(Whereupon, a 1-page letter to Lucy Hicks from
9	cytoskeletal inhibitor?	9	Debra Leith dated 2/19/93, was marked Exhibit-14 for
10	MR. MELORO: Objection to form.	10	identification.)
11	THE WITNESS: I do not recali.	111	BY MR. TIMMONS:
12	BY MR. TIMMONS:	12	Q. Have you ever seen that document before?
13	Q. Was it	13	A. (Witness peruses document.)
14	MR. MELORO: I just wanted to ask you: There's	14	I don't recall this document.
15	some handwriting in that paragraph. Do you know what the	15	Q. Okay. Let me ask you generally, then,
16	source of it is?	16	whether or not you understood that it was UAB's position
17	MR. TIMMONS: No. I assume it's a patent office	17	that Dr. Anderson should be a named inventor on the PCT
18	note. But not from us, as far as I know.	18	application filed September 25th, 1992, and the CIP
19	BY MR. TIMMONS:	19	application filed January 28, 1993.
20	Q. Did Mr. Klein identify cytochalasins as a	20	A. You know, I'm you know, I'm not sure,
21	cytoskeletal inhibitor?	21	because I left all of the inventorship and who was going
22	A. I believe so. We had talked about a number	22	to appear on these, that was handled by the legal
23		23	department. And I don't recall anything other than that.
24	literature for any type of compound that may have an	24	They handled that type of thing, so I don't recall ever
25	effect.	25	seeing this letter. And as far as I knew, the assigning
L		-	g rend do tol do a kilen, die dosiginig
-			
	131		133
1	Q. And the paragraph above the last sentence	1	of the inventors was something that was under development.
2	states "Preferred antimigratory and therapeutic agents are	2	Q. Okay. If you could turn to the second page
3	the cytochalasins."	3	of this document.
-5	Do you see that?	4	A. (Witness complies.)
6	A. (Witness peruses document.) O. The last sentence.	5	Q. If you could read the first paragraph to
7	Q. The last sentence. A. Oh, the last	6	yourself, please.
8	Q. It starts at Line 19.	7	A. (Witness complies.)
9	A. Oh, okay. (Witness peruses document.)	9	Q. Ready?
10	Yes.	_	A. Okay.
11	Q. Is the only affect of cytochalasins on	10	Q. Do you agree with Ms. Hick's statement that
12	vascular smooth muscle cells as an antimigratory?		"Dr. Anderson, in conjunction with Dr. Kunz, were the
13	A. No.	12	persons who conceived the invention of using NeoRx
14	Q. What other effects do the cytochalasins have	13	antibodies either coupled directly to a therapeutic agent
15	on vascular smooth muscle cells?	14	or bound to the time-released formulation of the
16	A. Well, depending on the dose, it can reach a	15	therapeutic agent to target the therapeutic agent to the
17	level where it causes death or it can inhibit anything	16	site of vascular trauma or disease to inhibit restenosis"?
18	that has to do with actin positioning, any type of	17	A. Yes.
19		18	Q. You agree with that?
20	mediator response. It could affect those, too. Q. Okay. Would it at the correct dosage,	19	A. Mm-hm.
21	could it affect the proliferative effect of the vascular	20	Q. Is that a "yes"? I'm sorry.
22	smooth muscle cells?	21	A. Yes. Yes.
23	A. Yes.	22	Q. No "mm-hms."
24		23	A. Yes.
25	Q. And if you used the right dosage, could you also inhibit the contractile characteristics of vascular	24	Q. Do you also agree with the last sentence,
	and announce contractile characteristics of vascular	25	that "Dr. Anderson also contributed to the claims relating

34 (Pages 130 to 133)

		_	
	134		136
1	to the use of a catheter to accomplish administration of	1	A. No.
2	5 ,,	2	Q. Did you ever coat any kind of stent with a
3	MR. MELORO: Objection; lack of foundation with	3	therapeutic agent?
4	1 1	4	A. Yes.
5	THE WITNESS: I can't remember the exact	. 5	Q. When did you do that?
6	recollection of that. We talked about catheters. I'm not	6	 That must have been around '95, something
7	sure that that wasn't something — it may well be that	7	like that.
8	Pete Anderson brought that up, but it doesn't mean that it	8	Q. Okay.
9	wasn't - I may not have paid much attention to it at that	9	MR. TIMMONS: Kunz 15 is a document dated
10	, , , , , , , , , , , , , , , , , , , ,	10	April 15th, 1993. The Production number is NeoRx 100022
11		11	through -25.
12		12	(Whereupon, a 4-page fax to Debra Leith from
13		13	Lucy Hicks dated 4/15/93 was marked Exhibit-15 for
14		14	identification.)
15		15	BY MR. TIMMONS:
16	2	16	Q. And Dr. Kunz, it's a letter from Bob
17	sentence where it talks about where the antibodies are	17	Schroff - Robert Schroff, sorry - to Kenneth Roozen. And
18 19	coupled directly to the therapeutic agent or bound to the	18	my question is: Have you ever seen this document before?
20	time-released formulation of the therapeutic agent. What was the time-release formulation of	19	MR. MELORO: With the handwriting or in any
21	the therapeutic agent?	20 21	form?
22	A. We went through a number of things for time.	22	MR. TIMMONS: That's a good question. In any form. That's the only one I had, so
23	This I'm just looking at the date at this. This was	23	
24	'93.	24	THE WITNESS: (Witness peruses document.) I don't recall ever seeing this.
25	Some of the first things that Pete and I	25	BY MR. TIMMONS:
	135		127
1	talked about as far as time-release was that the around	1	Q. Okay. Did you discuss with is it
2	the time that we first discussed, there was a	2	Dr. Schroff?
3	biodegradable stent. One of the first things we thought	3	A. Yes.
4	of was incorporating our material into a biodegradable	4	Q Dr. Schroff the issue as to whether or
5	stent. And from there, it progressed to microparticles,	5	not and I'm reading from the first paragraph.
6	codeines on regular stents or graphs or any type of	6	A. Mm-hm.
7	implantable device.	7	Q as to whether or not Dr. Anderson should
8	Q. Okay. Let me follow up on that a little bit.	8	be should remain as inventor on recent patent
9	Did there come a time where the therapeutic	9	applications drafted and submitted by NeoRx?
10	agent alone, not bound to a conjugate, was used in a	10	A. I must have at some point, but I can't
11	sustained-release formula?	11	remember precise discussions or whether it was with him.
12	A. Yeah. Sustained-release formula, yes.	12	I'm trying to recall.
13	Q. When was that work done, approximately?	13	I'll have to answer "yes," because there
14 15	A. Well, that's why I was looking at the date	14	
16	here. It may have been around this time. Q. So did Dr. Anderson have input into the idea	15	inventor. I don't remember whether I discussed those with
17	of using the therapeutic agent without the conjugate in a	16 17	Bob Schroff or with the legal department at NeoRx.
18	sustained-release formula?	18	Q. Okay. Well, I'm sure your attorney's going to object if I ask you if you went to the legal
19	A. Yes.	19	department. But did you discuss — I'd like to limit it
20	Q. Okay. You said that one of the some of	20	to the things you can remember you talked about with Bob
21	the things you were talking about with Dr. Anderson was	21	Schroff,
22	incorporating material into a biodegrade stent.	22	Did you discuss with Bob Schroff the
23	A. Yes.	23	decision that Pete Anderson would be named as an inventor.
24	Q. Did you ever make a biodegradable stent with	24	on all pending applications?
25	a therapeutic agent in it?	25	MK. AL-SALAM: And even if those discussions
25	a therapeutic agent in it?	25	MR. AL-SALAM: And even if those discussions

	138		140
1	involved communications with the legal department, for	1	where "Dr. Schroff proposes a modification to our original
2	example, if Mr. Schroff told you what the legal said or	2	agreement."
3	vice versa, I would instruct you not to answer.	3	Were you involved at all in the
4	THE WITNESS: I can't remember precisely	4	modification of the agreement between NeoRx and UAB
5	discussing this with Bob Schroff. It may have all been	5	regarding Dr. Anderson's work?
6	with the legal department, but	6	A. No.
7	BY MR. TIMMONS:	7	Q. Okay. Do you know if that original agreement
8	Q. Okay.	8	was modified?
9	A. I don't remember discussing it in much detail	9	A. No, I didn't know that.
10	at all.	10	Q. Okay. If you could turn to the second page.
11	Q. Okay. Fine.	11	A. (Witness complies.)
12	If you'd go to the second paragraph, about	12	Q. In the middle of the second paragraph,
13	a third of way down, it says, "We are no longer pursuing	13	there's a sentence that states "I would propose that the
14	an immunoconjugate approach."	14	scope of our agreement be modified to include any products
15	Do you see that?	15	covered by an allowed claim in a patent naming Pete
16	A. Yes.	16	Anderson or any other UAB investigator as an Inventor."
17	Q. When would	17	Did you discuss that proposal with
18	A. Wait a minute.	18	Dr. Schroff?
19	Q. Sorry.	19	A. I don't recall discussing that.
20	The fourth line down, it says, "We are no	20	Q. Okay. Were you aware of any agreements made
21	longer pursuing an immunoconjugate approach."	21	between UAB and NeoRx that would cover any products
22	A. (Witness peruses document.)	22	covered by an allowed claim in a patent naming Pete
23	Yes, I see it.	23	Anderson as an inventor?
24	Q. When was the immunoconjugates approach	24	
25	abandoned, to your knowledge?	25	
23	abandoned, to your knowledge:	25	MR. TIMMONS: This is going to be quick, then.
	,		
	139		
			141
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36 (Pages 138 to 141)

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	166		168
1		1	Q. Dr. Anderson did have a role in that daim?
2		2	A. Yes, for the same reasons.
3	Anderson put us in contact with Southern Research	3	Q. And then Claim 8, could you take a look at
4	Institute, that could manufacture the nanoparticles for	4	that and tell me whether Dr. Anderson had any role in
5	antiproliferative effects.	5	that?
6	BY MR. TIMMONS:	6	MR. MELORO: Same objections to those questions.
7	Q. Okay. If you could read through Claim 1	7	THE WITNESS: (Witness peruses document.)
8		8	Yes, for the same reasons.
9	A. Or am I in the wrong patent?	9	BY MR. TIMMONS:
10	Q. You should be in the -928 patent. Is that	10	Q. Okay. If you could turn to the -609 patent,
11	where?	111	please. It's Klein Exhibit 8.
12	A. Let me read the one	12	A. (Witness complies.)
13	Q. Let me see if you have the right patent. The	13	Q. If you could turn to Column 65 again, please.
14	<u>. </u>	14	A. (Witness complies.)
15	Claim 1 read whatever you want, but Claim 1 is what I	15	Q. And if you could just read Claim 18 to
16		16	yourself, please.
17	MR. MELORO: I'm just going to point the witness	17	A. (Witness complies.)
18	to exactly where Claim 1 is.	18	Okay.
19	MR. TIMMONS: Sure.	19	Q. Okay? My first question is whether or not
20	MR. MELORO: So it starts right there and goes	20	the cytostatic therapeutic agent that's in Claim 18 has
21		21	the same definition for you as the cytostatic agent we
22	After you've finished reading, Mr. Timmons	22	talked about in the -928 patent?
23	will tell you what his question is.	23	MR. MELORO: Let's go back and pull out the -928
24	THE WITNESS: (Witness peruses document.)	24	patent.
-25	Okay. The question?	25	BY MR. TIMMONS:
#		ļ	
	167	•	169
1	BY MR. TIMMONS:	1	Q. Well, why don't we do this. It would
2	Q. The question is whether or not Dr. Anderson	2	probably be easier if I just ask you what a cytostatic
/3	had any role in the invention of Claim 1?	3	therapeutic agent is in Claim 1 on the -609 patent.
4	MR. MELORO: Objection to form.	4	MR. MELORO: Objection to form.
5	THE WITNESS: Okay. In reading this claim -	5	MR. MAS: Claim 1 or Claim 18?
6	and I've gotten these mixed around, I'm not sure which one	6	MR. TIMMONS: Claim 18. Sorry.
<i>3.</i> 7	would - but this one mentions a stent in here.	7	MR. MELORO: Same objection.
8	BY MR. TIMMONS:	8	THE WITNESS: (Witness peruses document.)
9	Q. Mm-hm.	9	The answer would be yes.
10	A. When we mention a stent, we're talking about		BY MR. TIMMONS:
11 11			
11	antiproliferative, and that falls into the early	11	Q. Okay. I probably screwed up the question
12	contributions of Pete with antiproliferatives.	12	completely. Let me just take that and run. I'm kidding.
12 13	contributions of Pete with antiproliferatives. Q. Okay. So Claim 1 in your opinion,	12 13	completely. Let me just take that and run. I'm kidding. I'm kidding.
12 13 14	contributions of Pete with antiproliferatives. Q. Okay. So Claim 1 in your opinion, Dr. Anderson is a co-inventor of Claim 1?	12 13 14	completely. Let me just take that and run. I'm kidding. I'm kidding. My question is whether or not — could you
12 13 14 15	contributions of Pete with antiproliferatives. Q. Okay. So Claim 1 — in your opinion, Dr. Anderson is a co-inventor of Claim 1? MR. MELORO: Objection.	12 13 14 15	completely. Let me just take that and run. I'm kidding. I'm kidding. My question is whether or not could you tell me the definition of "cytostatic therapeutic agent"
12 13 14 15 16	contributions of Pete with antiproliferatives. Q. Okay. So Claim 1 — in your opinion, Dr. Anderson is a co-inventor of Claim 1? MR. MELORO: Objection. THE WITNESS: I don't know whether it was	12 13 14 15 16	completely. Let me just take that and run. I'm kidding. I'm kidding. My question is whether or not could you tell me the definition of "cytostatic therapeutic agent" as you would understand in Claim 18?
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12 13 14 15 16 17 18 19 20 21 22 23 24	contributions of Pete with antiproliferatives. Q. Okay. So Claim 1 — in your opinion, Dr. Anderson is a co-inventor of Claim 1? MR. MELORO: Objection. THE WITNESS: I don't know whether it was determined he was a co-inventor. I said that he contributed to any of the aspects of antiproliferatives. BY MR. TIMMONS: Q. Okay. A. So from that respect. Q. If you would look at Claim 2, I have the same question about that. A. (Witness peruses document.)	12 13 14 15 16 17 18 19 20 21 22 23 24	completely. Let me just take that and run. I'm kidding. I'm kidding. My question is whether or not — could you tell me the definition of "cytostatic therapeutic agent" as you would understand in Claim 18? A. Oh. I thought you asked if they were the same. The definition I gave you is a broad one. It's all categories. It's the same as I repeated before. Q. Thank you. Thank you very much. And as to Claim 18, did Dr. Anderson have any role in the invention of Claim 18? MR. MELORO: Objection to form.
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43 (Pages 166 to 169)

		T	
	170		172
1	BY MR. TIMMONS:	1	MR. MELORO: He was just asking for dates.
2	Q. Okay. And if you'd look at Claim 55 and read	2	THE WITNESS: I can't remember precise dates.
3	it to yourself, please.	3	BY MR. TIMMONS:
4	A. Oh, wait a minute. Wait a minute.	4	Q. But you don't know why Dr. Anderson isn't the
5	Q. Sorry. Go ahead.	5	named inventor on -009, -928, or -609 patents, right?
6	A. (Witness peruses document.) Yeah. Stents. It's the same.	6 7	A. No.
7		8	Q. Okay.
8		وا	MR. MELORO: Can we go off the record for a second?
9	look at that. A. (Witness complies.)	10	MR. TIMMONS: Sure.
10	Okay.	111	THE VIDEOGRAPHER: The time is 4:02 p.m. Going
11 12			off the record.
13	Q. Did Dr. Anderson have any role in the invention of Claim 55?	13	(Pause in the proceedings.)
14	MR. MELORO: Objection to form.	14	THE VIDEOGRAPHER: Back on the record. The time
15	THE WITNESS: Yes.	15	is 4:12 p.m.
16	BY MR. TIMMONS:	16	BY MR. TIMMONS:
17	O. Okay. If I can summarize, it seems that it's	17	Q. If you could put in front of you let me
18	your opinion that Dr. Anderson had a role in the invention	18	just put in front of you the
19	of any claim that relates to the antiproliferative effects	19	Let me just put in front of you again the
20	of a therapeutic agent, correct?	20	-009 patent and have you turn to Claim 1 that's in
21	MR. MELORO: Objection to form.	21	Column 65.
22	THE WITNESS: Yes. That's my personal opinion.	22	A. (Witness complies.)
23	BY MR. TIMMONS:	23	Q. And we talked a little bit about the
24	Q. Okay. Now, is there any reason that you're	24	sustained-release dosage form that's required by that
25	aware of that Dr. Anderson wasn't named as an inventor on	25	daim.
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	171	1	173
1	any of the three patents that we just went through?	1	Do you remember that?
1 2		2	Do you remember that? A. Which
8	any of the three patents that we just went through? MR. AL-SALAM: I caution the witness not to disclose the substance of any attorney-client	2	Do you remember that? A. Which Q. Column 1, it says, "Administered to a mammal
2 3 4	any of the three patents that we just went through? MR. AL-SALAM: I caution the witness not to disclose the substance of any attorney-client communications in answering that question.	2 3 4	Do you remember that? A. Which Q. Column 1, it says, "Administered to a mammal the sustained-release dosage form."
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2 3 4 5 6	any of the three patents that we just went through? MR. AL-SALAM: I caution the witness not to disclose the substance of any attorney-client communications in answering that question. THE WITNESS: Well, I don't think I have to. I played no role in determining who was going to be on the	2 3 4 5 6	Do you remember that? A. Which Q. Column 1, it says, "Administered to a mammal the sustained-release dosage form." A. Claim 60 Q. No. Claim 1 on Column 65. Sorry.
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44 (Pages 170 to 173)

Exhibit #

CORDS U BOSON

Naegeli Reporting Corporation (800) 528-3335 FAX (503) 227-7123

Deponent C FCW2
Reporter TIA REIDT



The University of Alabama at Birmingham 1825 University Boulevard 118 Mortimer Jordan Hall Birmingham, Alabama 35294-2010

Telephone (205) 934-9911 Fax (205) 934-1221

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" Kenneth Roosen	From BAB SALLOTS
ca UAB	on Neo Kx
DepL	Phone 106-2-81-7001
205-934-1221	Fax 206-298-4442

Neolix Corporation 410 West Harrison Souttle, WA 98119-4007 206-281-7001 Fax 206-284-7112

June 14, 1993

Kenneth J. Roozen, Ph.D. Vice President for Research and University Affairs Executive Director, UAB Research Foundation 125 Mortimer Jordan Hall 1825 University Boulevard **UAB Station**

Birmingham, AL 35294-2010

Dear Ken.

I believe you ere aware through discussions with Pete Anderson and Lucy Hicks that there has been some lesue as to whether Pete should remain as an inventor on recent patent applications drafted and submitted by NeoRx. After several discussions, we have decided that Pete will be named as an inventor on all pending applications.

The issue of Pete's inventorship arose in the context of the progression of our research from the initial concept of monoclonal antibody-based immunoconjugates for the treatment of restenosis, to our present research activities. We are no longer pursuing an immunoconjugate approach. However, we have continued to build on the initial concepts, and Pete has continued to be a valuable collaborator in our studies. Since the initial patent application was filed in September of 1891, NeoRx has filed three continuations of that original application. The patent family has become quite complex, involving a number of different technical approaches and potential product formulations. The most recent patent application also involves additional non-NeoRx inventors, further complicating the picture.

What I would like to do at this time is propose a modification to our original agreement. As we discussed briefly during my visit in February, NeoRx must finance these development efforts through a variety of corporate alliances. That reality, and the fact that our current development activities have caused us to take licenses on additional technologies beyond our license with UAB, necessitate the proposed modifications to our agreement. HIGHLY CONFIDENTIAL

ATTORNEYS' EYES ONLY

NeoRx 100023

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NEORX

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K.J. Roozen, Ph.D. June 14, 1993 Page 2 NeoRx 100024 HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY

Our agreement currently calls for a \$20,000 license fee (which has been made), and two additional milestone payments of \$50,000 each upon the initiation of Phase III clinical trials and upon product approval. We do not propose any modifications to these payments.

Product?

The agreement also calls for a 1% royalty on net sales by NeoRx or its sublicenses for the life of the last-to-expire patent, or for 10 years. This provision was appropriate for the originally conceived immunoconjugate product that NeoRx intended to market directly, but is not appropriate for the product formulations currently under investigations. In addition, the current agreement covers only "conjugates". This definition is too constrained, as we no longer are investigating conjugates as described in the original patent application and the NeoRx-UAB agreement. I would propose that the scope of our agreement be modified to include any products covered by an allowed claim in a patent naming Pete Anderson or any other UAB investigator as an inventor. The current royalty arrangement also assumes that all products are in the field of coronary heart disease. Some of the claims that have been included in the continuation applications are for cancer and other non-coronary applications that have not directly grown out of our collaboration with UAB.

I would propose the following revised terms for our agreement with respect to

For products sold by NeoRx:

0.5% royalty on net sales if a UAB co-inventor patent only is required,

1.5% of royalty on net sales of products approved for a non-coronary disease indication.

1.5% of royalties paid to NeoRx if UAB co-inventor patent only is always and products sold by a NeoRx sublicenses:

1.5% of royalties paid to NeoRx if UAB co-inventor patent only is always and products addition,

0.5% of royalties paid to NeoRx if anon-UAB) patent required in addition,

0.5% of royalties paid to NeoRx if anon-UAB) patent required in addition,

0.1% of royalties paid to NeoRx on products approved for a non-coronary disease indication.;

1.5% Of royalties paid to NeoRx on products approved for a non-coronary disease indication.;

1.5% Of royalties paid to NeoRx on products approved for a non-coronary disease indication.;

1.6% Of royalties paid to NeoRx on products approved for a non-coronary disease indication.;

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1.6% Of royalties paid to NeoRx on products approved for a non-coronary disease indication.

NEORX

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K.J. Roozen, Ph.D. June 14, 1993

Page 3

There is a provision in the current agreement for a minimum annual royalty payment of \$10,000 once products are approved. I see no need to alter that provision.

I hope that these modifications seem fair and reasonable to you. We value our collaboration with UAB and have every intention of a continued close relationship. These revised terms should provide a format for that ongoing collaboration. Please let me know your thoughts on the proposed modifications. Once we are in egreement, we would be happy to draft a modified agreement for your review.

Sincerely yours,

Robert W. Schroff, Ph.D., M.B.A. Vice President and General Manager

Cardlovascular Products

cc: Pete Anderson

NeoRx 100025

HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY



September 10, 1993

FAX: (206) 298-9442

Bob Schroff, Ph.D., M.B.A. Vice President and General Manager Cardiovascular Products NeoRx Corporation 410 West Harrison Seattle, WA 98119-4007

RE: UAB RF and NeoRx Agreement/

Pete Anderson

UAB RF Ref: FY91-031

Dear Bob:

Per our conversation during August, you indicated your office would be forwarding to our attention a draft of the Agreement between NeoRx and the UAB Research Foundation. I would appreciate a call to indicate when I can expect said document. If I can facilitate the execution of this document in any way, please do not hesitate to ask me.

With Warmest Regards,

Lucy C. Hicks, Esquire Program Mariager II -Patents and Licenses

LCH/sbh

c: Dr. Kenneth J. Roozen

NOTE THE

DEFENDANT'S
EXHIBIT
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AGREEMENT

THIS AGREEMENT is entered into as of September 1, 1993, by and between NEORX CORPORATION ("NeoRx"), a Washington corporation whose principal place of business is located at 410 West Harrison Street, Seattle, Washington 98119, and THE UAB RESEARCH FOUNDATION ("UABRF"), located at 1825 University Boulevard, Birmingham, Alabama 35294-2010.

WHEREAS, NeoRx is engaged in research and development of pharmaceutical products; and

WHEREAS, NeoRx desires to develop certain products related to vascular trauma in general, and coronary artery angioplasty restenosis in particular; and

WHEREAS, UABRF is willing to grant NeoRx exclusive rights in any technology developed according to the terms and conditions of this agreement ("the Agreement");

NOW, THEREFORE, in consideration of the mutual representations, warranties and promises herein contained, the parties agree as follows:

ARTICLE I DEFINITIONS

- 1.1 "Technology" shall mean any present and future patent applications and confidential information, including know-how, trade secrets or other data ("Know-How"), related to vascular trauma in general, and coronary artery angioplasty restenosis in particular, that is owned or controlled (in the sense of being able to grant licenses) by UABRF and that relates specifically to work conducted by Dr. Peter Anderson in conjunction with NeoRx.
- 1.2 "Post-Angioplasty Restenosis" shall mean proliferation of vascular smooth muscle cells in response to trauma associated with angioplasty of coronary arteries in human patients.
- 1.3 "Product" shall mean each product developed in whole or in part by NeoRx that is covered by a claim in a Patent.
- 1.4 "Patent" shall mean an issued and valid US or foreign patent that includes a claim that encompasses Technology and that names a UABRF employee as an inventor.

- 1.5 "Field of Use" shall mean any use.
- 1.6 "NeoRx" shall mean NeoRx Corporation, any person, corporation, firm, partnership, or other entity in which NeoRx owns or controls, either directly or indirectly, at least 50% of the voting stock thereof, and any legal representative, successor or assignee of NeoRx.
- 1.7 "Net Sales" shall mean the invoice amount received from commercial sales to independent, unrelated parties in bona fide arms-length transactions of the Product, less the following deductions:
 - (i) Trade and/or quantity discounts actually allowed and taken in such amounts as are customary in the trade;
 - (ii) Sales and other excise taxes and duties paid, absorbed, or allowed;
 - (iii) Amounts billed to cover transportation costs;
 - (iv) Actual cost of transportation charges, if transportation charges are not separately billed; and
 - (v) Amounts repaid or credited by reason of rejection, defects, or return, or because of retroactive price reductions.
- 1.8 "Phase III Clinical Trials" shall mean multicenter human trials conducted under provisions of 21 CFR Part 312, Subpart A, Section 312.1(a)(2) relating to Form FD 1571, Item 1C, with respect to the use of Product in vivo in humans.
- 1.9 "Product License Application" shall mean an initial product license application covering a Product filed with the Food and Drug Administration, and any amendments thereto.

ARTICLE II LICENSE

- 2.1 UABRF hereby grants to NeoRx, subject to the terms and conditions herein, an exclusive world-wide license in the Field of Use to develop Technology and to make, have made, use, sell, and have sold Product for the term of this Agreement. Said license shall grant to NeoRx the right to grant sublicenses no greater in scope than the license granted herein. Any sublicensees shall be subject to the provisions of this Agreement.
- 2.2 During the term of the Agreement, NeoRx shall pay for filing and prosecution of U.S. and foreign patent application(s) covering Joint Invention(s) (as defined in Section 8.2(c), below).

In addition, NeoRx will make payments to UABRF for collaborative studies involving a pig model system, so long as the results of preliminary experiments warrant initiation and continuation of such collaborative study. Payments to UABRF for these collaborative studies will be negotiated prior to initiation of each such study.

ARTICLE III DEVELOPMENT BY NEORX

- 3.1 NeoRx, at its own cost and expense, shall expend reasonable efforts and resources to carry out the development and marketing of at least one Product to the point of a Product License Application with the Food and Drug Administration within ten years of the effective date of this Agreement, unless this deadline is extended by mutual agreement of the parties. UABRF shall not unreasonably withhold approval of any request by NeoRx to extend this period, if such request is supported by a reasonable showing by NeoRx of due diligence toward bringing the Froduct to commercialization. "Due diligence" shall include any reasonable and diligent application for approval required by any government agency within the United States.
- 3.2 NeoRx agrees to use UABRF for the conduct of requisite clinical trials of the Product, wherever reasonably practicable.
- 3.3 After bringing Product to the point of commercialization, NeoRx agrees to use reasonable efforts to keep at least one Product reasonably available to the public during the term of this Agreement.

ARTICLE IV Collaboration by UABRE

UABRF shall expend reasonable and diligent efforts to assist NeoRx in the research and development of Product. These efforts shall include the active collaboration and consultation of Dr. Anderson and other appropriate research and clinical personnel. Further, UABRF shall perform collaborative studies involving a pig model system and clinical trials, so long as the results of preliminary experiments warrant initiation and continuation of such collaborative studies.

ARTICLE V ROYALTIES AND PAYMENTS

- 5.1 NeoRx shall make the following non-refundable milestone payments with respect to each Product:
 - (i) \$50,000 upon initiation of Phase III Clinical Trials with the first Product; and
 - (ii) \$50,000 upon approval by the Food and Drug Administration of each Product License Application, but no more than one such payment will be made for each Product License Application as defined herein.
 - 5.2 NeoRx shall pay:
- (A) one of the following royalty rates on Net Sales of Product by NeoRx:
 - 0.5% if only a Patent covers the Product;
 - 0.25% if a Patent covers the Product, and if royalties paid by NeoRx to one or more third parties for the Product total 1% or more of Net Sales of Product by NeoRx; and
 - 0.05% if a Patent covers the Product and the Product has been approved for a non-coronary disease indication; and
- (B) one of the following royalty rates for Product that is sold by a NeoRx sublicensee:
 - 2.5% of royalties paid to NeoRx by its sublicensee with respect to such Patent, if only a Patent covers the Product;
 - 1.25% of royalties paid to NeoRx by its sublicensee with respect to such Patent, if a Patent covers the Product, and if royalties paid by NeoRx to one or more third parties for the Product total 5% or more of royalties paid to NeoRx by its sublicensees for Product that is sold by such sublicensees; and
 - 0.5% of royalties paid to NeoRx by its sublicensee with respect to such Patent, if a Patent covers the Product and the Product has been approved for a non-coronary disease indication.

These royalties shall be paid by NeoRx to UABRF for a period ending upon the expiration date of the last-to-expire Patent. For any Product, if multiple issued Patents cover the Product, a portion of the Product or related methods, the total royalty rate under this Agreement shall not exceed 0.5% of Net Sales by NeoRx or 2.5% of royalties paid to NeoRx by its sublicensee with respect to such

- Patents. If NeoRx receives non-cash consideration from a sublicensee as partial or complete consideration with respect to such Patents, NeoRx shall pay UABRF 2.5%, 1.25% or 0.5% (as described in (B), above) of an imputed royalty of 5% on Product that is sold by the sublicensee. If cumulative annual royalties, paid or owing at the end of any calendar year wherein Product has been sold, do not exceed \$10,000, NeoRx shall pay UABRF the difference between \$10,000 and cumulative annual royalties paid or accrued for that calendar year. Such payment shall be made within ninety (90) days after December 31. If NeoRx has paid UABRF for animal studies, clinical trials and/or other collaborative services during the current calendar year, such payments by NeoRx to UABRF during the current calendar year shall be deemed to be cumulative annual royalties and be credited against the \$10,000 minimum cumulative annual royalties.
- 5.3 NeoRx agrees to submit to UABRF, within ninety (90) days after each calendar half year ending June 30 and December 31 wherein Product has been sold, reports setting forth for the preceding six month period: (i) the amount of Product sold by NeoRx; (ii) the amount of royalties received by NeoRx from its sublicensees; and, (iii) in the event of a payment to UABRF by NeoRx based upon an imputed royalty, the amount of Product sold by such NeoRx sublicensees.
- 5.4 NeoRx and/or its sublicensees shall pay all necessary expenses for domestic and foreign commercialization of Product, and such expenses shall not be deducted from any payments due UABRF as provided herein.
- 5.5 All royalties shall be paid to UABRF in lawful money of the United States. NeoRx shall be responsible for compliance with all currency exchange laws and regulations.

ARTICLE VI REPORTS AND RECORDS

6.1 NeoRx shall keep and shall cause its sublicensees to keep accurate and complete records of Product made, used, sold, or otherwise disposed of under this Agreement appropriate to determine the amount of royalty fee due hereunder. Such records shall be retained for at least three years following a particular reporting period. Together with each six month royalty payment, NeoRx shall provide UABRF with a written report with respect to the six months for which royalties are paid. Such reports shall state the Net Sales of all of the Products which are both manufactured by and sold or otherwise distributed by NeoRx (and its sublicensees), and shall specify in reasonable detail the manner by which the royalty payment for the six months period was calculated. In no event shall NeoRx owe UABRF more than a 0.5% royalty rate on Net Sales by NeoRx or 2.5% of royalties paid to NeoRx by its sublicensees for

any given Product and its related manufacture, distribution and ultimate sale.

6.2 NeoRx (and its sublicensees) shall keep and maintain true and complete books and records pertaining to its distribution and sale of the Product in sufficient detail to enable an independent certified public accountant, selected by UABRF, to determine with accuracy whether NeoRx has fully paid all sums payable to UABRF pursuant to this Agreement. NeoRx (and its sublicensees) shall maintain its books and records for at least three years following the date of a particular payment. NeoRx (and its sublicensees) shall make such books and records, as well as appropriate personnel, available at reasonable times during regular business hours for inspection and inquiry (subject to customary confidentiality agreements) by UABRF's designated certified public accountant. In addition, NeoRx (and its sublicensees) shall supply UABRF's certified public accountant with all details and supporting data reasonably necessary to verify the accuracy and completeness of all reports and payments required by this Agreement.

ARTICLE VII PROPRIETARY AND CONFIDENTIAL INFORMATION

- 7.1 "Proprietary and Confidential Information" as herein used, means any and all information and materials concerning any aspect of each respective party not generally known to persons but those associated with that party. This shall include, but not be limited to, clinical data, concepts, processes and techniques, trade secrets, business strategies (whether or not implemented) and financial information.
- 7.2 Proprietary and Confidential Information is disclosed in the strictest confidence and shall be considered confidential and proprietary information of the disclosing party. Except as otherwise provided herein, any Proprietary and Confidential Information that is disclosed in writing or orally between the parties shall be maintained as confidential for a period of five years from the date of this Agreement.
- 7.3 Except as authorized herein or by the disclosing party, the receiving party will not duplicate, transfer or disclose nor allow any other person to duplicate, transfer or disclose any of the Proprietary and Confidential Information. The receiving party will safeguard all Proprietary and Confidential Information at all times so that it is not exposed to or used by unauthorized persons and will exercise at least the same degree of care used to protect its own confidential information. Except as provided herein, the receiving party shall not use Proprietary and Confidential Information without the prior written consent of the disclosing party, which consent shall not be unreasonably withheld.

- 7.4 The restrictive obligations set forth above shall not apply to the disclosure or use of any Proprietary and Confidential Information which: 1) is or later becomes publicly known under circumstances involving no breach of this Agreement by the receiving party; 2) is already known to the receiving party at the time of receipt of the information; 3) is lawfully made available by a third party; or 4) is independently developed by an employee of the receiving party who has not been privy to the Confidential Information provided.
- 7.5 NeoRx shall have the right to disclose Proprietary and Confidential Information of the disclosing party to the Food and Drug Administration in the process of obtaining approval of a Product; to disclose Proprietary and Confidential Information of the disclosing party to collaborators or potential collaborators under conditions of confidentiality; and to use Proprietary and Confidential Information of the disclosing party in patent applications describing the Technology.
- 7.6 Except as explicitly set forth herein, both parties understand that no patent rights or licenses are granted by this Agreement. The disclosure of Proprietary and Confidential Information hereunder shall not result in any obligation for either party to grant any party any rights in and to the patent rights or other Proprietary and Confidential Information of the other party, and that no other obligations of any kind are assumed by or implied against either party, except for those stated herein.
- 7.7 UABRF agrees to submit to NeoRx for review, at least thirty (30) days prior to oral publication or submission for written publication to any third party not bound by proprietary information restrictions comparable to those contained herein, the intended oral or written publication containing Proprietary and Confidential Information of NeoRx or such information that is jointly developed by the parties. UABRF agrees that upon reasonable request of NeoRx, and to the extent reasonably necessary to protect NeoRx's patent or other legal rights, UABRF will delay from publishing material containing NeoRx Confidential and Proprietary Information.

ARTICLE VIII PATENTS AND LITIGATION

8.1 "Inventions" shall mean all discoveries, concepts and ideas, whether patentable or not, which arise from or are directly related to Proprietary and Confidential Information or property, including but not limited to articles, processes, methods, formulas, systems and techniques, as well as improvements thereof and know-how related thereto.

- 8.2 Any Invention made in the performance of this Agreement and that relates to Technology or Product shall be subject to the following terms and conditions:
 - (a) Where the Invention is made solely by UABRF or by employees and/or contractors of UABRF, title to such Invention shall remain in UABRF, and NeoRx and UABRF agree to negotiate in good faith a license agreement whereby NeoRx would be granted an exclusive, world-wide, irrevocable license to make, have made, use, sell, have sold and sublicense such Invention for the longer of 1) the term of any patent that may issue thereon, or 2) a period of ten (10) years from the date of the Agreement. Such license agreement shall not conflict with and shall be subject to laws and regulations of, and agreements with, the United States Government and public and private funding organizations, including NIH guidelines;
 - (b) Where the Invention is made solely by employees or contractors of NeoRx, title to such Invention shall remain in NeoRx;
 - (c) Where the Invention is made jointly by employees or contractors of NeoRx and of UABRF ("Joint Invention"), title shall rest in both NeoRx and UABRF.

In the case of Inventions described in Section 8(a) only, UABRF has the option to prepare and file world-wide patent applications at its sole discretion. In the case of Inventions described in Section 8(b) only, NeoRx has the option to prepare and file world-wide patent applications at its sole discretion. In the case of Joint Inventions described in Section 8(c) only, NeoRx will prepare and file a United States patent application(s) for any Joint Invention. Preparation, filing, prosecution and maintenance of corresponding foreign patent applications will be at the sole discretion of NeoRx. UABRF shall cooperate in expediting preparation, filing and prosecution of such patent applications.

The respective costs of such patent filings will be borne by: UABRF wholly under Section 8(a); and NeoRx wholly under Sections 8(b) and 8(c).

As used herein, the terms "inventor," "Invention," "joint inventors" and "joint invention" are defined to be consistent with those definitions established and set forth in Title 35 U.S.C. and case law pertaining thereto.

8.3 If any patent application submitted by NeoRx matures into a Patent that claims a Product or a method of using a Product per se, UABRF shall notify NeoRx promptly in writing of any infringement of such Patent which becomes known to UABRF. NeoRx has no obligation to bring or prosecute any legal action against third parties for infringement of a Patent; however, NeoRx and

UABRF may mutually agree to pursue such legal action on terms to be negotiated in good faith by NeoRx and UABRF. In jurisdictions where NeoRx does not have standing to pursue legal action against third parties for infringement of a Patent, and if NeoRx desires to pursue such legal action, UABRF agrees that NeoRx may perfect such Patent rights in the name of UABRF.

ARTICLE IX INDEMNIFICATION

- 9.1 NeoRx agrees to indemnify UABRF and hold it harmless from and against suits, claims and demands whatsoever for injuries to or death of any person, damage to or loss of property alleged to have arisen out of, in connection with, or incidental to NeoRx's performance of the terms of this Agreement. In respect of NeoRx's obligation to indemnify, NeoRx shall defend suits, claims and demands brought against UABRF. NeoRx's obligation to defend shall arise upon notification to NeoRx and/or UABRF of such claim.
- 9.2 In respect of NeoRx's obligations set forth in Section 9.1 above, NeoRx agrees to pay, liquidate, discharge and satisfy any and all judgments, awards or expenses which may be rendered against or incurred by UABRF, including, but not limited to, all costs of suit, reasonable attorneys' fees and reasonable expenses in connection therewith, except to the extent that such judgment, award or expense is attributable, in whole or in part, to the negligence of UABRF.

ARTICLE X TERMINATION

- 10.1 This Agreement and the license granted in Article II shall have a term commencing on the effective date, unless terminated sooner in accordance with the provisions of this Agreement. Upon termination of the Agreement, all Proprietary and Confidential Information and materials in the possession of the receiving party shall be returned to the disclosing party, except that one copy of written information may be retained by the receiving party in a limited access file. If NeoRx does not file a Product License Application within five years of the effective date of the Agreement, and if this deadline is not extended by mutual agreement of the parties (see Section 3.1), the Agreement will terminate. Unless terminated sooner in accordance with the provisions of this Agreement, this Agreement shall remain in force for the longer of: (a) the last-to-expire Patent claiming a component or aspect of an FDA-approved Product, or (b) 10 years from the effective date of this Agreement.
- 10.2 UABRF may terminate this Agreement if NeoRx is in breach because of its failure to pay royalties or milestones due and owing

or its failure to submit a royalty report as prescribed herein. In such case, UABRF shall provide written notice to NeoRx of an alleged breach of this Agreement, and NeoRx shall have 30 days from receipt of the written notice to cure the breach. If the breach is not cured within such 30 day period, UABRF may give notice of termination of the Agreement. In addition to UABRF's right to terminate, both parties shall have all legal and equitable remedies available to enforce the terms and conditions of this Agreement.

10.3 NeoRx may terminate this Agreement if UABRF is in breach because of its failure to collaborate in the research and development of Product.

ARTICLE XI GENERAL PROVISIONS

- 11.1 The interpretation and application of the provisions of this Agreement shall be governed by the laws of the state of Washington.
- 11.2 Notices required to be given under this Agreement shall be in writing and shall be effective only when delivered to the addressee by mail or by facsimile at the address stated below, or at such other address as either party may hereafter state by written notice:

If to NeoRx:

Jeffrey J. Miller, Ph.D., J.D.
Senior Vice President
Business Development and Legal Affairs
NeoRx Corporation
410 West Harrison Street
Seattle, Washington 98119
Telephone: (206) 281-7001, X518
Facsimile: (206) 284-7112

If to UABRF:

Dr. Kenneth J. Roozen
Executive Director - UAB Research Foundation
125 Mortimer Jordan Hall
1825 University Boulevard
UAB Station
Birmingham, Alabama 35294-2010
Telephone: (205) 934-0622
Facsimile: (205) 934-1221

or such other address as either party may request in writing.

- 11.3 This Agreement constitutes the entire understanding between the parties and supersedes all prior agreements and understandings between the parties with respect to the subject matter hereof or information relating thereto, and neither party shall be obligated by any condition, promise, or representation other than those expressly stated herein or as may be subsequently agreed to by the parties hereto in writing.
- 11.4 Nothing contained in this Agreement shall be construed as creating any partnership or joint venture between the parties. Neither party shall be authorized to act as agent for the other, nor shall either party enter into any agreement or contract on behalf of the other as representative or agent.
- 11.5 This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties. Neither NeoRx nor UABRF shall assign this Agreement without the other's prior written consent, which shall not be unreasonably withheld. Neither party shall be deemed unreasonable if it withholds approval because of its good faith concern regarding protection of its intellectual property rights by the prospective assignee.
- 11.6 No waiver or modification of any of the terms of this Agreement shall be effective unless in writing and signed by both parties. A waiver by either party of any right under this Agreement shall not be deemed a waiver by that party of the same or any other right or any subsequent occasion.
- 11.7 If any of the provisions of this Agreement are determined to be to any extent invalid or unenforceable, the invalidity and unenforceability of that provision shall not affect the validity and enforceability of the remaining provisions of this Agreement, and the affected provision shall be construed as if it were written so as to be valid and enforceable to the maximum possible extent.
- 11.8 Each party and the individuals executing this Agreement on that party's behalf, represents and warrants to the other party that it has obtained any and all necessary corporate authority to make and perform this Agreement. Each party further represents and warrants to the other that it is not precluded by the terms of any other agreement from making or performing this Agreement.
- 11.9 Any controversy or dispute arising out of or relating to this Agreement shall be submitted to binding arbitration, under the then existing Commercial Arbitration rules of the American Arbitration Association. Such decision may grant legal and equitable relief, including but not limited to injunction, and may grant any other form of relief appropriate. Judgment may be obtained on the arbitration award in any court having competent jurisdiction.

11.10 In the event that any arbitration or action should be commenced to enforce, or otherwise with respect to, any of the terms or conditions of this Agreement, the prevailing party shall be entitled to recover from the other, in addition to any and all other relief to which it may be entitled, all of the prevailing party's costs and expenses thereby incurred, including reasonable attorney fees relating to legal services provided in advance or connection with any such legal proceeding or any appeal thereof. The arbitrator or court shall determine which party has, under all the circumstances, "prevailed."

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed individually or, where applicable, by its duly authorized representative.

NEORX CORPORATION

Jeffrey J Miller, Ph.D., J.D

Senior Vice President Business Development and

Legal Affairs

THE UAB RESEARCH FOUNDATION

Dr Kenneth J. Roozer Executive Director

Jus 120193

NEORX

NeoRx Corporation 410 West Harrison Seattle, WA 98119-4007 206-281-7001 Fax 206-284-7112

November 1, 1994

Peter G. Anderson, D.V.M., Ph.D. 406 Delcris Drive Birmingham, Alabama 35226

RE: U.S. Patent Application Serial No. 08/062,451 THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS Filed: May 13, 1993

Dear Dr. Anderson:

The enclosed Assignment will be filed in the U.S. Patent and Trademark Office in connection with the above-identified patent application. This application is a continuation-in-part (CIP) application of U.S. Serial No. 07/011,669, filed January 28, 1993, which is a CIP of international patent application PCT/US92/08220, filed September 25, 1992, which is a CIP of U.S. Serial No. 07/767,254, filed September 27, 1991.

Please sign and return the Assignment to me by Thursday, November 10, 1994. Thank you.

Sincerely,

Sue E. Lintott
Patent Paralegal

Enclosure

DEFENDANT'S
EXHIBIT

Awderson 10

Soc 1.8.05

ASSIGNMENT

WHEREAS, we, Lawrence L. Kunz, Richard A. Klein, John M. Reno, David J. Grainger, James C. Metcalfe, Peter L. Weissberg and Peter G. Anderson (hereinafter referred to as ASSIGNORS), having post office addresses of 2310 223 Court, N.E., Redmond, Washington 98053; 6620 162nd place, S.W., Lynnwood, Washington 98037; 2452 Elm Drive, Brier, Washington 98036; Magdalene College, Cambridge, England CB3 OAG; 20 Luard Road, Cambridge, England CB2 2PJ; 116 Shelford Road, Cambridge, England CB2 2NF; and 406 Delcris Drive, Birmingham, Alabama 35226, respectively, are the joint inventors of an invention entitled "THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS", as described and claimed in the specification and claims forming part of an application for United States letters patent which was filed on May 13, 1993 and assigned U.S. Patent Application Serial No. 08/062,451, which application in part discloses and claims subject matter disclosed in U.S. Serial No. 08/011,669, filed January 28, 1993, which application in part discloses and claims subject matter disclosed in PCT/US92/08220, filed September 25, 1992, which application in part discloses and claims subject matter disclosed in U.S. Serial No. 07/767,254, filed September 27, 1991, and now abandoned; and

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WHEREAS, NeoRx Corporation (hereinafter referred to as ASSIGNEE), a corporation of the State of Washington having a place of business at 410 West Harrison, Seattle, Washington 98119, is desirous of acquiring the entire right, title and interest in and to the invention and in and to any letters patent that may be granted therefor in the United States and in any and all foreign countries;

NOW, THEREFORE, ASSIGNORS hereby sell, assign and transfer unto said ASSIGNEE the full and exclusive right, title and interest in and to said invention for the United States of America and its territorial possessions and all foreign countries, and the entire right, title and interest in and to any and all letters patent which may be granted therefor in the United States of America and its territorial possessions and in any and all foreign countries, and in any and all divisions, reissues and continuations thereof, including the right to claim

US Serial No. 08/062,451

priority rights deriving from said United States application by virtue of the International Convention, said invention, application and all letters patent on such invention to be held and enjoyed by ASSIGNEE for its use and benefit and of its successors and assigns as fully and entirely as the same would have been held and enjoyed by ASSIGNORS had this assignment, transfer and sale not been made. ASSIGNORS hereby authorize and request the Commissioner of Patents and Trademarks to issue all letters patent on said invention to ASSIGNEE. ASSIGNORS agree to execute all instruments and documents required for the making and prosecution of applications for United States and foreign letters patent, or for the purpose of protecting title to said invention or letters patent therefor.

OCT 18,1994 Date	Lawrence L. Kunz
Nov. 1, 1994 Date	Richard A. Klein

October 27 1994

John M. Reno

Date David J. Grainger

UAB01083

US Serial No. 08/062,451

19994	JEHokache
Date	James C. Metcalfe
8 -9 -94 .	Jaliny.
Date	Peter L. Weissberg
11-7-94 Date	Lette & Anderson

HIGHLY CONFIDENTIAL

1	IN THE UNITED STATES DISTRICT COURT
2	FOR THE DISTRICT OF DELAWARE HIGHLY CONFIDENTIAL
3	
4	BOSTON SCIENTIFIC SCIMED, INC., and Case No. 03-283-SLR
5	BOSTON SCIENTIFIC CORPORATION,
6	Plaintiffs,
7	vs.
8	CORDIS CORPORATION and
9	JOHNSON & JOHNSON, INC.,
10	Defendants.
11	
12	BOSTON SCIENTIFIC SCIMED, et al., Case No. 03-1138-SLR
13	Plaintiffs,
14	vs.
15	CORDIS, et al., and GUIDANT, et al.,
16	Defendants.
17	
18	HIGHLY CONFIDENTIAL
19	VIDEOTAPED DEPOSITION OF JOHN RENO, Ph.D.
20	Taken on behalf of the Defendant
21	February 11, 2005
22	
23	
24	
25	

21

22

25 recall.

22 structures that are built to allow the cell to move.

24 division. You know, if you see those nice mitotic

25 pictures pulling the DNA apart, those are also

Some structures are also involved in cell

23

Q. Who was Sue Lintott?

A. I - she was a - well, it says patent

24 guess she had some specialized training, but I don't

23 paralegal. I looked at her more as a legal secretary. I

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50	52
1 Q. Did she provide you with the documents to sign	1 through 31434. And it has a reel and frame number on it,
2 for submission to the patent office?	2 reel 7375 and frame 925. And that was Anderson 11. Ask
3 A. In general? I can't I can't comment on this	3 you if you've seen that document before.
4 one. But in general, yes, she would — she would be one	4 (Whereupon, Anderson Exhibit-11 was presented to
5 of the people.	5 the witness.)
6 Q. And you didn't draft this assignment; right?	6 A. It's not familiar to me.
7 A. Oh, no.	7 Q. If you would look at the second page.
8 Q. And the drafting of the assignment was done by	8 A. Yes.
9 the legal department at NeoRx?	9 Q. Is that your signature?
10 A. I have no idea.	10 A. Boy, is this the same document?
11 Q. Who else provided you with documents to sign	11 Q. Let me
12 that were to be submitted to the patent office?	12 A. It's my signature is identical, I would
13 MR. JOHNSON: Objection.	13 suspect that this is the identical document without
14 MR. McBRAYER: Objection on privilege. And I'm	14 looking further.
15 going to instruct you not to answer to the extent your	15 Q. Okay. So the signature dated October 27th, 1994
16 knowledge is based on a conversation with a NeoRx attorney	16 on Anderson 10 is the same as the signature that's dated
17 who might have told you what was intended to be done with	17 October 27th, 1994 on Anderson 11; right?
18 the documents, you are instructed not to answer. But if	18 MR. JOHNSON: Objection to form, calls for
19 you have any independent knowledge, you can answer.	19 expert testimony.
20 BY MR. TIMMONS:	20 THE WITNESS: They look identical to me.
Q. My question is who provided you with documents	21 BY MR. TIMMONS:
22 to sign that were submitted to the patent office?	22 Q. Okay. If you would turn to the first page of
23 A. In general anybody within the legal department	23 Anderson 11, the very first paragraph again.
24 would do that. More specifically I believe it was the	24 A. Yes.
25 the secretaries that typically do that.	25 Q. You see where at the bottom of that paragraph it
51	53
1 Q. Who was Debra Leith?	1 lists a number of applications to which the 451
2 A. Debra Leith was a patent attorney at NeoRx.	2 application is related to. Do you see that?
3 Q. Did she ever provide you with documents that	3 A. Yes.
4 were to be submitted to the patent office? 5 A. She may have. I don't recall.	4 Q. Okay. And in this one there isn't any listing
5 A. She may have. I don't recall. 6 O. Who was Anna Wight?	5 of the application serial numbers 07 slash 767 comma 254 6 which is filed September 27th, 1991, is there?
7 A. She was also a patent attorney at NeoRx.	7 MR. JOHNSON: Objection to form.
8 Q. Did she ever provide you with documents like	8 THE WITNESS: That's correct.
9 assignments or anything like that that were to be	9 BY MR. TIMMONS:
10 submitted to the patent office?	10 Q. Did you sign two different assignments on
11 A. Same answer. May have.	11 October 27th, 1994?
12 Q. Did you ever work with any outside attorneys	12 MR. JOHNSON: Objection to form.
13 that represented the NeoRx company in conjunction with	13 THE WITNESS: I don't know.
14 A. Yes.	14 BY MR. TIMMONS:
15 Q the patent office? Who did you work with?	15 Q. Did anyone at the legal department change the
16 A. I can't remember the names. I know there was	16 first page of this assignment, do you know?
17 I did quite a bit of that in the cancer area. I really	17 MR. McBRAYER: Objection.
18 don't recall specific names. I believe one of the	18 MR. JOHNSON: Objection to form, calls for
19 attorneys was from Seed and Berry. That's about the	19 speculation.
20 extent of my memory.	20 MR. McBRAYER: Instructing the witness not to
Na. a a	21 answer. If you Dr. Reno, if you have personal
21 Q. Okay. What I'd like to ask you to do is keep	
22 this document in front of you so you can look at the	22 knowledge such that you may have seen such an act, you can
22 this document in front of you so you can look at the 23 assignment. And I'd like to give you something that was	23 answer the question. But to the extent it's based on any
22 this document in front of you so you can look at the 23 assignment. And I'd like to give you something that was 24 previously marked as Anderson Exhibit 11. That's an	23 answer the question. But to the extent it's based on any 24 communication with anyone from the legal department, I'm
22 this document in front of you so you can look at the 23 assignment. And I'd like to give you something that was	23 answer the question. But to the extent it's based on any

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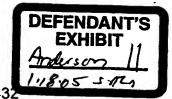
	. 58		60
1	to again?	1	through 38 and 44 through 47 were canceled?
2	BY MR. TIMMONS:	2	MR. TIMMONS: Objection to form,
3	Q. The end of the very first paragraph in the	3	mischaracterization.
4	assignment, that doesn't refer to the 1991 application?	4	THE WITNESS: Yes.
5	MR. JOHNSON: Objection to form.	5	BY MR. TIMMONS:
6	THE WITNESS: No, I don't see it.	6	Q. Yes?
7	BY MR. TIMMONS:	7	A. I see that.
8	Q. Let me have that one back. Mike, what I'm	8	Q. Uh-huh. And going back to paper 22, you were
9	turning to is paper 22 from the 793 continuation off the	9	the inventor on claims 35 through 38?
10	451. And what I'd like to do, Dr. Reno, is give you a	10	MR. JOHNSON: Objection, form,
11	copy of the amendment which was filed in a later	11	mischaracterization, calls for a legal conclusion.
	application that was a continuation of the 451.	12	THE WITNESS: Again, I don't - I was never
13	This amendment was filed on September 25th, 1995	13	involved — I don't — I don't know about inventorship. I
14	in the patent office in application serial number	14	deferred that completely to the patent people.
	08450793. It's paper number 22 from the 793 application.	15	BY MR. TIMMONS:
	And my question is whether or not you've ever seen that	16	Q. And do you consider yourself the inventor of
	document before.		daim 44?
18	MR. JOHNSON: This is the one that was received	18	MR. JOHNSON: Same objections.
	October 16th?	19	THE WITNESS: I can only give you the same
20	MR. TIMMONS: Yes, yes. Paper 22.		answer.
21	MR. JOHNSON: Just looks like there's a E or	21	BY MR. TIMMONS:
	something after it. I wasn't sure if there was more than	22	Q. Okay. But in any event, the representatives of
	one paper 22.	1	NeoRx identified you as the inventor of claims 35 through
24	THE WITNESS: I don't believe I saw this before.		38 and 44 through 47 in paper 32; correct?
25	BY MR. TIMMONS:	25	MR. JOHNSON: Objection to form,
			,
	59		61
1	Q. The third page in there's daim number 35.	1	mischaracterization.
2	Could you just take a look at that and read that to	2	THE WITNESS: It said I was a co-inventor.
3	yourself.	3	BY MR. TIMMONS:
4	(The witness reviews the exhibit.)	4	Q. And they also asked that you be deleted as an
5	Do you see that?	5	inventor in the application; right?
6	A. Yes.	6	A. I'm sorry. I'm lost. In what application?
7	Q. And that talks about the use of taxol?	7	Q. In the — let me just read the sentence to you
8	A. That's correct.	8	from paper 32. "This petition is submitted to request
9	Q. And daim 44 is on the next page.	9	that the name of John M. Reno be deleted as an inventor in
10	MR. JOHNSON: Just let him finish his questions.	10	the above-identified application;" correct?
11		11	A. That's correct.
111	BY MR. TIMMONS:		A. Mats whet.
12	BY MR. TIMMONS: Q. Claim 44 relates to the use of a cytoskeletal	12	MR. JOHNSON: Do you want your individual papers
	Q. Claim 44 relates to the use of a cytoskeletal	12	
12	Q. Claim 44 relates to the use of a cytoskeletal	12	MR. JOHNSON: Do you want your individual papers
12 13	Q. Claim 44 relates to the use of a cytoskeletal inhibitor. Do you see that?	12 13 14	MR. JOHNSON: Do you want your individual papers back?
12 13 14	Q. Claim 44 relates to the use of a cytoskeletal inhibitor. Do you see that? MR. JOHNSON: Objection to form.	12 13 14	MR. JOHNSON: Do you want your individual papers back? MR. TIMMONS: Yeah, before I get this screwed
12 13 14 15	Q. Claim 44 relates to the use of a cytoskeletal inhibitor. Do you see that? MR. JOHNSON: Objection to form. THE WITNESS: Yes.	12 13 14 15 16	MR. JOHNSON: Do you want your individual papers back? MR. TIMMONS: Yeah, before I get this screwed up. Let me have that one.
12 13 14 15 16 17	Q. Claim 44 relates to the use of a cytoskeletal inhibitor. Do you see that? MR. JOHNSON: Objection to form. THE WITNESS: Yes. BY MR. TIMMONS: Q. If you keep that document in front of you, I'm	12 13 14 15 16	MR. JOHNSON: Do you want your individual papers back? MR. TIMMONS: Yeah, before I get this screwed up. Let me have that one. MR. JOHNSON: This one. This is yours, but those two
12 13 14 15 16 17 18	Q. Claim 44 relates to the use of a cytoskeletal inhibitor. Do you see that? MR. JOHNSON: Objection to form. THE WITNESS: Yes. BY MR. TIMMONS: Q. If you keep that document in front of you, I'm going to give you another one. What I'm going to do now	12 13 14 15 16 17	MR. JOHNSON: Do you want your individual papers back? MR. TIMMONS: Yeah, before I get this screwed up. Let me have that one. MR. JOHNSON: This one. This is yours, but those two MR. TIMMONS: This one and that one. Thank you.
12 13 14 15 16 17 18 19	Q. Claim 44 relates to the use of a cytoskeletal inhibitor. Do you see that? MR. JOHNSON: Objection to form. THE WITNESS: Yes. BY MR. TIMMONS: Q. If you keep that document in front of you, I'm going to give you another one. What I'm going to do now is I'm going to give you document 32 from the 793	12 13 14 15 16 17 18 19	MR. JOHNSON: Do you want your individual papers back? MR. TIMMONS: Yeah, before I get this screwed up. Let me have that one. MR. JOHNSON: This one. This is yours, but those two
12 13 14 15 16 17 18 19 20	Q. Claim 44 relates to the use of a cytoskeletal inhibitor. Do you see that? MR. JOHNSON: Objection to form. THE WITNESS: Yes. BY MR. TIMMONS: Q. If you keep that document in front of you, I'm going to give you another one. What I'm going to do now is I'm going to give you document 32 from the 793 application, paper 32. And that's petition to correct	12 13 14 15 16 17 18 19 20	MR. JOHNSON: Do you want your individual papers back? MR. TIMMONS: Yeah, before I get this screwed up. Let me have that one. MR. JOHNSON: This one. This is yours, but those two MR. TIMMONS: This one and that one. Thank you. MR. JOHNSON: Are we can we put this aside or
12 13 14 15 16 17 18 19 20 21	Q. Claim 44 relates to the use of a cytoskeletal inhibitor. Do you see that? MR. JOHNSON: Objection to form. THE WITNESS: Yes. BY MR. TIMMONS: Q. If you keep that document in front of you, I'm going to give you another one. What I'm going to do now is I'm going to give you document 32 from the 793 application, paper 32. And that's petition to correct inventorship pursuant to 37 CFR 1.48B. And ask if you've	12 13 14 15 16 17 18 19 20 21	MR. JOHNSON: Do you want your individual papers back? MR. TIMMONS: Yeah, before I get this screwed up. Let me have that one. MR. JOHNSON: This one. This is yours, but those two MR. TIMMONS: This one and that one. Thank you. MR. JOHNSON: Are we can we put this aside or MR. TIMMONS: One second.
12- 13 14 15 16 17 18 19 20 21 22	Q. Claim 44 relates to the use of a cytoskeletal inhibitor. Do you see that? MR. JOHNSON: Objection to form. THE WITNESS: Yes. BY MR. TIMMONS: Q. If you keep that document in front of you, I'm going to give you another one. What I'm going to do now is I'm going to give you document 32 from the 793 application, paper 32. And that's petition to correct inventorship pursuant to 37 CFR 1.48B. And ask if you've ever seen that document before?	12 13 14 15 16 17 18 19 20 21 22	MR. JOHNSON: Do you want your individual papers back? MR. TIMMONS: Yeah, before I get this screwed up. Let me have that one. MR. JOHNSON: This one. This is yours, but those two MR. TIMMONS: This one and that one. Thank you. MR. JOHNSON: Are we can we put this aside or MR. TIMMONS: One second. MR. JOHNSON: Sorry.
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ASSIGNMENT

WHEREAS, we, Lawrence L. Kunz, Richard A. Klein, John M. Reno, David J. Grainger, James C. Metcalfe, Peter L. Weissberg and Peter G. Anderson (hereinafter referred to as ASSIGNORS), having post office addresses of 2310 223 Court, N.E., Redmond, Washington 98053; 6620 162nd place, S.W., Lynnwood, Washington 98037; 2452 Blm Drive, Brier, Washington 98036; Magdalene College, Cambridge, England CB3 OAG; 20 Luard Road, Cambridge, England CB2 2PJ; 116 Shelford Road, Cambridge, England CB2 2NF; and 406 Delcris Drive, Birmingham, Alabama 35226, respectively, are the joint inventors of an invention entitled "THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS", as described and claimed in the specification and claims forming part of an application for United States letters patent which was filed on May 13, 1993 and assigned U.S. Patent Application Serial No. 08/062,451, which application in part discloses and claims subject matter disclosed in U.S. Serial No. 08/011,669, filed January 28, 1993, which application in part discloses and claims subject matter disclosed in PCT/US92/08220, filed September 25, 1992; and

WHEREAS, NeoRx Colporation (hereinafter referred to as ASSIGNEE), a corporation of the State of Washington having a place of business at 410 West Harrison, Seattle, Washington 98119, is desirous of acquiring the entire right, title and interest in and to the invention and in and to any letters patent that may be granted therefor in the United States and in any and all foreign countries;

NOW, THEREFORE, ASSIGNORS hereby sell, assign and transfer unto said ASSIGNEE the full and exclusive right, title and interest in and to said invention for the United States of America and its territorial possessions and all foreign countries, and the entire right, title and interest in and to any and all letters patent which may be granted therefor in the United States of America and its territorial possessions and in any and all divisions, reissues and continuations thereof, including the right to claim



NeoRx031432

priority rights deriving from said United States application by virtue of the International Convention, said invention, application and all letters patent on such invention to be held and enjoyed by ASSIGNEE for its use and benefit and of its successors and assigns as fully and entirely as the same would have been held and enjoyed by ASSIGNORS had this assignment, transfer and sale not been made. ASSIGNORS hereby authorize and request the Commissioner of Patents and Trademarks to issue all letters patent on said invention to ASSIGNEE. ASSIGNORS agree to execute all instruments and documents required for the making and prosecution of applications for United States and foreign letters patent, or for the purpose of protecting title to said invention or letters patent therefor.

OCT 19,1994

Lawrence L. Kunz

Nov. 1, 1994

Richard A. Klein

October 27 1994
Date

John M. Reno

19 9 44 Date

David J. Grainger

2

US Serial No. 08/062,451

PATEHT & TRADFMARK OFFICE

HAR -9 95

199.94

Date

JEHOREGE

8.9.94

Date

Peter L. Weissberg

11-7-94

Date

Peter C Anderson

,

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:

L.L. Kunz et al.

Examiner: S. Barts

Serial No.:

08/450,793

Art Unit: 1204

Filed:

May 25, 1995

Docket No.: 295.003US1

For:

THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS

Assistant Commissioner for Patents Washington, DC 20231

Sir:

This petition is submitted to request that the names of Richard A. Klein, David J. Grainger, James C. Metcalfe, Peter L. Weissberg and Peter G. Anderson be deleted as inventors in the above-identified application. Claims were canceled in the Amendments filed July 26, 1995 and September 21, 1995, which were directed to particular embodiments of the invention of which Richard A. Klein, David J. Grainger, James C. Metcalfe, Peter L. Weissberg and Peter G. Anderson were co-inventors.

> 320 LC 05/29/96 08450793 1 122 130.00 CK

Thus, Richard A. Klein, David J. Grainger, James C. Metcalfe, Peter L. Weissberg and Peter G. Anderson are no longer inventors of the subject matter claimed in the above-identified application.

Respectfully submitted,

L.L. Kunz et al.,

By their attorneys,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.

P.O. Box 2938

Minneapolis, MN 55402 (612) 339-0331

WDW:jee

Warren D. Woessner Reg. No. 30,440

396 K2

UNITED STATES PATENT AND TRADEMARK OFFICE

Lawrence L. Kunz et al.

Examiner: S. Barts

Serial No.:

08/450,793

Group Art Unit: 1204

Filed:

May 25, 1995

Docket: 295.003US1

Title:

THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS

PETITION TO CORRECT INVENTORSHIP PURSUANT TO 37 C.F.R. 81.48(b)

Assistant Commissioner for Patents Washington, DC 20231

Sir:

This petition is submitted to request that the name of John M. Reno be deleted as an inventor in the above-identified application. In the Amendment which accompanies this Petition, claims 35-38 and 44-47 were canceled. The canceled claims are directed to particular embodiments of the invention of which John M. Reno was a co-inventor.

Thus, John M. Reno is no longer an inventor of the subject matter claimed in the above-identified application.

Respectfully submitted,

Lawrence L. Kunz et al.,

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.

P.O. Box 2938

Minneapolis, MN 55402

(612) 339-0331

Date JEE/dlp

Reg. No. 39,665

ited with the United States Postal Service as first class

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GCY 0000779

Patent 5,811,447

PATENT

5,811,447

Patent No.: Issue Date:

September 22, 1998

Patentee: Lawrence L. Kunz

Docket: 295.003US1

Title:

THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CEI

REQUEST FOR CERTIFICATE OF CORRECTION

Commissioner of Patents and Trademarks Washington, D.C. 20231

It is requested that a Certificate of Correction be issued correcting printing errors appearing in the above-identified United States patent. Two copies of the text of the Certificate in the suggested form are enclosed.

Issuance of the Certificate of Correction would neither expand nor contract the scope of

the claims as properly allowed, and re-examination is not required.

As the error is that of the Patent Office, it is believed that no fee is due.

The Examiner is authorized to charge any additional fees or credit overpayment to Deposit

Account No. 19-0743. Account No. 19-0743.

Respectfully submitted,

LAWRENCE L. KUNZ

By his Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. Box 2938 Minneapolis, MN 55402

(612) 373-6959

Reg. No. 39,665

JEE:pww

UNITED STATES PATENT AND TRADEMARK OFFICE CERTIFICATE OF CORRECTION

PATENT NO.: 5,811,447

Page 1 of 2

DATED:

Sep. 22, 1998

INVENTOR(S) Kunz

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the front page, section [75], please delete all inventors except "Lawrence L. Kunz, Redmond, Wash."

In column 76, line 9, please delete "and for a period of time". K

In column 76, line 11, please delete "while not eliminating their" and insert --, wherein the amount of said cytochalasin administered does not eliminate the- therefor.

In column 76, line 11, please delete, "ability to secrete" and insert --ability of vascular smooth muscle cells to secrete- therefor.

In column 76, line 30-34, delete claim 9 in its entirety and insert -The method of claim 7 wherein the sustained release dosage form comprises microparticles or nanoparticles.-- therefor,

In column 76, lines 35-46, please delete claims 10, 11 and 12 in their entirety and insert

-10. A therapeutic method comprising:

administering to a traumatized blood vessel of a mammal an amount of (a) cytochalasin B or a cytochalasin that is a functional analog thereof effective to biologically stent said vessel; and

administering an amount of a sustained release dosage form comprising an amount of a cytostatic agent effective to inhibit proliferation of the cells of said vessel in response to said trauma.

The method of claim 10 wherein the administration is local.

The method of claim 10 wherein the cytostatic agent comprises cytochalasin B or a 12. cytochalasin that is a functional analog thereof.- therefor.

In column 61, Table 3, under column labeled "Time", please delete "Cell Pallets" and insert ~Cell Pellets- therefor.

MAILING ADDRESS OF SENDER: SCHWEGMAN, LLINDRERG, WOESSNER & KLUTH, P.A. Attr. Janel E. Embresson

PATENT NO. SATLAG

Docket No. 295,003US1

UNITED STATES PATENT AND TRADEMARK OFFICE **CERTIFICATE OF CORRECTION**

PATENT NO.: 5,811,447

Page 2 of 2

DATED:

Sep. 22, 1998

INVENTOR(S) Kunz

It is cortified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

In column 11, line 55 please insert -9- in the figure as indicated below:

In column 46, line 20, please insert -2'-in the figure as indicated below:

MAILING ADDRESS OF SENDER: SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. After James E. Embretson P.O. Box 2008

PATENT NO. 5,811,447 Docket No. 285.003US1



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Lawrence L. Kunz

Examiner: Samuel Barts

Patent No.: 5,811,447

Group Art Unit: 1621

Issue Date: September 22, 1998

Docket No.: 295.003US1

Title: THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS

C. of. C

Commissioner of Patents and Trademarks Washington, D.C. 20231

We are transmitting herewith the attached:

We are transmitting herewith the attached:

X Request for Certificate of Correction.

X Certificate of Correction Form - PTO-1050 (in duplicate)

X A return postcard.

Other: ____.

Please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

SCHWEGMAN, LUNDBERG, WOESSNER & KLITH, P.A. P.O. Box 2938, Minneapolis, MN 55402 (612-373-6900)

Name: Junet E. Emb Reg. No. 39,665 JEE:CMG:pww



UNITED _ ATES DEPARTMENT OF COMMERCE

Patent and Trademark Office ASSISTANT SECRETARY OF COMMERCE AND COMMISSIONER OF PATENTS AND TRADEMARKS

Washington, D.C. 20231

Date: AUG 15 2000

Patent No: 5,811,447

Issued: September 22, 1998

Lawrence L. Kunz, et al. Inventor:

THERAPEUTIC INHIBITOR OF VASCULAR Title:

SMOOTH MUSCLE CELLS

Docket No: 295.003US1

Re: Request for Certificate of Correction

Consideration has been given your request for the issuance of a certificate of correction in the above-identified patent under the provision of Rule 1.322 or 1.323.

Respecting the alleged errors, the proposed corrections are not mistakes of (1) clerical nature, (2) typos and /or (3) minor character. The corrections also would require reexamination of proposed new claims. Applicant is advised that these changes must be made in a reissue application.

In view of the foregoing, your request is hereby denied.

A revised request will be favorably received.

Further correspondence concerning this matter should be filed and directed to Decisions and Certificates of Correction Branch. Any response(s) must be filed within a two-month period.

Decisions & Certificates of Correction Branch (703) 305-8309

Schwegman, Lundberg, Woessner & Kluth, P.A. Attn: Janet E. Embretson P.O. Box 2938 Minneapolis, MN 55402

vj/NBC



<u>IN THE UNITED STATES PATENT AND TRADEMARK OFFICE</u>

5,811,447

Docket: 295.003US1

Issue Date:

September 22, 1998

Patentee: Lawrence L. Kunz

Title:

THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS

RENEWED REQUEST FOR CERTIFICATE OF CORRECTION

Decisions and Certificates of Correction Branch United States Patent and Trademark Office Washington, D.C. 20231

Sir.

Two Certificates of Correction were requested for the above-identified patent, U.S. Patent No. 5,811,447, issued September 22, 1998, one mailed on January 27, 2000 and the other mailed on February 3, 2000 (a copy of each is enclosed herewith). In correspondence from the Decisions and Certificates of Correction Branch dated August 15, 2000, patentee's request for issuance of those Certificates of Correction was denied. This paper is filed to renew the request for issuance of both Certificates of Correction.

35 U.S.C. § 254 states that "[w]henever a mistake in a patent, incurred through the fault of the Patent and Trademark Office, is clearly disclosed by the records of the Office, the Commissioner may issue a certificate of correction stating the fact and nature of such mistake, under seal, without charge, to be recorded in the records of patents". Errors made by the Office may be corrected at the request of patentee or patentee's assignee. 37 C.F.R. § 1.322(a). 37 C.F.R. § 1.323 provides for the issuance of a certificate of correction "[w]henever a mistake of a clerical or typographical nature or of minor character which was not the fault of the Office, appears in a patent and a showing is made that such mistake occurred in good faith, the Commissioner may, upon payment of the fee set forth in 37 C.F.R. § 1.20(a), issue a certificate, if the correction does not involve such changes in the patent as would constitute new matter or would require reexamination".

U.S. Patent No. 5,811,447 issued from Serial No. 08/450,793, filed May 25, 1995, which is a continuation of Serial No. 08/062,451, filed May 13, 1993, abandoned, which is a continuation in part of Serial No. 08/011,669, filed January 28, 1993, abandoned. In the Request for Certificate of Correction filed on January 27, 2000 for the '447 patent, the following corrections were requested: (1) deletion of the names of all inventors except Lawrence L. Kunz

formula V), column 46, line 20 (insert "2" at the proper position in the disclosed trichothecene), and column 61, Table 3 (delete "Pallets" and insert "Pellets" therefor); and (3) corrections to claims 1 and 9-12.

With respect to (1), a Petition to Correct Inventorship was filed in Serial No. 08/450,793 on May 21, 1996, requesting that the inventorship of the '793 application be changed from the joint inventorship of Lawrence L. Kunz, Richard A. Klein, John M. Reno, David J. Grainger, James C. Metcalfe, Peter L. Weissberg, and Peter G. Anderson to the joint inventorship of Lawrence L. Kunz and John M. Reno (a copy of the date stamped postcard for papers filed on May 21, 1996, and papers filed on May 21, 1996 which include the Petition to Correct Inventorship, is enclosed herewith as Exhibit A). A second Petition to Correct Inventorship was filed in Serial No. 08/450,793 on June 17, 1996, requesting that the inventorship of the '793 application be changed from the joint inventorship of Lawrence L. Kunz and John M. Reno to the sole inventorship of Lawrence L. Kunz (a copy of the date stamped postcard for papers filed on June 17, 1996, and papers filed on June 17, 1996, is enclosed herewith as Exhibit B).

With respect to (2), page 19 of the specification filed on May 13, 1993 and accorded Serial No. 08/062,451 provides a chemical structure labeled "V" which has a position labeled "9". Position 9 is not labeled in structure V at column 11, line 55 of the '447 patent. Page 83 of the '451 specification shows a trichothecene with a position labeled "2", which position is not labeled in the trichothecene in column 46, line 20 of the '447 patent. Table 3 (page 111) of the '451 specification has a column denoted "Cell Pellets". However, the corresponding column in Table 3 of the '447 patent appears as "Cell Pallets". A copy of each of the pages of the '451 specification referred to above is enclosed herewith (Exhibits C-D).

With respect to (3), in the final Office Action dated May 3, 1995 for the '451 application, the Examiner indicated that claims 1-10, 12-13, 17-18, and 21-25 were pending, and that claims 12-13, 17-18 and 21-25 were directed to an independent or distinct invention from the originally claimed invention and so were withdrawn from consideration (Exhibit E is a copy of the Office Action dated May 3, 1995). On May 25, 1995, a Request for File Wrapper Continuation Application was filed, and the application was accorded Serial No. 08/450,793 (a

copy of the date stamped postcard, and papers filed on May 25, 2995, is enclosed herewith as Exhibit F). On July 26, 1995, Applicant filed an Amendment which canceled claims 1-10 and 21-25, and added new claims 26-41 (a total of 16 new claims) (a copy of the Amendment is enclosed as Exhibit G).

The first Office Action for the '793 application, dated July 25, 1995, indicates that the claims pending in the application were claims 12-13, 17-18 and 21-25 (a copy of the Office Action is attached hereto as Exhibit H). Thus, claims 26-41 in the Amendment mailed on July 26, 1995 were never entered by the Examiner.

On September 21, 1995, Applicant filed an Amendment in response to the Office Action dated July 25, 1995 which canceled claims 12-13, 17-18 and 21-25 (all the pending claims per the first Office Action) and added claims 26-47 (a total of 22 new claims) (a copy of the papers filed on September 21, 1995, and the corresponding date stamped postcard, is enclosed as Exhibit I). The Office Action mailed May 23, 1996 indicates that the pending claims were claims 26-47, and that claims 35-38 and claims 44-47 were withdrawn from consideration because they were directed to an invention that was independent or distinct from the invention originally claimed (Exhibit J is a copy of the Office Action). Specifically, the Examiner stated that claims 35-38 were distinct from claims 26-34 and 39-43 because claims 35-38 were drawn to the use of a compound, i.e., taxol, which was distinct from the use of cytochalasin B (claims 26-34 and 39-43) and that claims 44-47 were directed to the use of a genus of compounds, i.e., cytoskeletal inhibitors, administered at a particular time.

Please consider that in the Amendment filed on July 26, 1995, claims 35-37 were directed to a method of using taxol, claim 38 was directed to a method of using cytochalasin B, and claim 41 was directed to the use of cytoskeletal inhibitors. Given that claims directed to the use of cytochalasin B were deemed elected for prosecution on the merits and claims directed to the use of taxol or cytoskeletal inhibitors were deemed to be directed to a non-elected invention in the '793 application, the claims presented in the Amendment filed on July 26, 1995 were clearly not pending as of May 23, 1996. Thus, the claims which were under consideration by the Examiner were those in the Amendment filed on September 21, 1995, not those in the Amendment filed on July 26, 1995.

BSC, et al. v. Cordis, et al. C.A. 03-1138-SLR (D. Del.) GCY 0000880 A Supplemental Amendment was filed on October 18, 1996 which included a copy of the claims Applicant considered as pending. The Supplemental Amendment also added new claims 48-51, resulting in a total of 26 claims, of which 18 were directed to the use of cytochalasin B (a copy of the Supplemental Amendment filed on October 18, 1998 is attached hereto as Exhibit K). If only the claims in the Amendment filed on July 26, 1995 had been entered and under consideration, only 12 claims would be directed to the use of cytochalasin B. If the claims in the Amendment filed on July 26, 1995 and the claims in the Supplemental Amendment filed on October 18, 1996 had been entered and under consideration, 16 claims would be directed to the use of cytochalasin B.

The Notice of Allowability dated February 3, 1997 indicates that the allowed claims were claims 26-34, 39-43 and 48-51 and that they were renumbered as claims 1-18 (a copy of the Notice of Allowability is attached hereto as Exhibit L), i.e., 18 claims were allowed. Thus, claims 26-34 and 39-43 (filed on September 21, 1995, including claims 32 and 33 as amended in an Amendment filed on December 14, 1995) and claims 48-51 (filed on October 18, 1996) were the claims which were allowed in Notice of Allowability mailed February 3, 1997, and which should correspond to claims 1-18 in the '447 patent. In particular claims 26, 34, 39, 40, and 41 in the '793 application should correspond to claims 1, 9, 10, 11, and 12, respectively, in the '447 patent.

However, claim 26, which was added in the Amendment filed on September 21, 1995 and not amended thereafter, does not recite the phrases "and for a period of time", "while not eliminating their" and "ability to secrete", phrases which appear in claim 1 of the '447 patent and which were recited in claim 26 in the Amendment filed on July 26, 1995. In contrast, claim 26 in the Amendment filed on September 21, 1995 recites "muscle cells, wherein the amount of said cytochalasin administered does not eliminate the ability of vascular smooth muscle cells to secrete extracellular matrix".

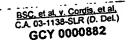
Claim 34, added in the Amendment filed on September 21, 1995 and not amended thereafter, recites "[t]he method of claim 32 wherein the sustained release dosage form comprises microparticles or nanoparticles". Claim 9 in the '447 patent recites "[a] therapeutic method comprising maintaining or expanding blood vessel luminal area by systemically administering to

BSC, et al. v. Cordis, et al. C.A. 03-1138-SLR (D. Del.) GCY 0000881 a mammal an effective amount of cytochalasin B or a cytochalasin that is a functional analog of cytochalasin B". Claim 9 in the '447 patent corresponds to claim 34 in the Amendment dated July 26, 1995 which was not entered.

Claims 39, 40 and 41 were added in the Amendment filed on September 21, 1995 and not amended thereafter. Claim 39 was directed to a "[a] therapeutic method comprising: (a) administering to a traumatized blood vessel of a mammal an amount of cytochalasin B or a cytochalasin that is a functional analog thereof effective to biologically stent said vessel; and (b) administering an amount of a sustained release dosage form comprising an amount of a cytostatic agent effective to inhibit proliferation of the cells of said vessel in response to said trauma". Claim 10 in the '447 patent recites "[t]he method of claim 9 wherein the cytostatic agent comprises cytochalasin B or a cytochalasin that is a functional analog thereof' (corresponding to claim 39 in the Amendment filed on July 26, 1995). Claim 40 was directed to "[t]he method of claim 39 wherein the administration is local". Claim 11 in the '447 patent, recites "[t]he method of claim 10 wherein the sustained release formulation comprises microparticles or nanoparticles comprising said cytochalasin B or said functional analog thereof" (corresponding to claim 40 in the Amendment filed on July 26, 1995). Claim 41 was directed to "[t]he method of claim 39 wherein the cytostatic agent comprises cytochalasin B or a cytochalasin that is a functional analog thereof", while claim 12 in the '447 patent recites "[a] method for biologically stenting a mammalian blood vessel, which method comprises administering to the blood vessel of a mammal a cytoskeletal inhibitor in an amount and for a period of time effective to inhibit the contraction or migration of the vascular smooth muscle cells" (corresponding to claim 41 in the Amendment filed on July 26, 1995).

Thus, claims 1 and 9-12 of the '447 patent as issued correspond to claims which were not entered by the Examiner in the '793 application.

The Request for Certificate of Correction filed on January 27, 2000 was intended to correct these errors. Based on the discussion above, it is respectfully submitted that the errors present in section 75, column 11, column 46, column 61, and claims 1 and 9-12 of the '477 patent are those of the Patent Office. Therefore, patentee respectfully submits that the Request for

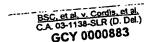


Certificate of Correction filed on January 27, 2000 for the '447 patent should be granted and that no fee is due.

In the Request for Certificate of Correction filed on February 3, 2000, patentee requested corrections to claims 1 and 14. A fee pursuant to 37 C.F.R. § 1.20(a) accompanied the Request. With respect to claim 1, it was requested that the word "traumatized" be inserted after the phrase "biological stenting a". As mentioned above, claim 26 in the Amendment filed on September 21, 1995 should correspond to claim 1 in the '447 patent, and claim 26 was not amended after September 21, 1995. The word "traumatized" appears after the phrase "biologically stenting a" in claim 26 in the Amendment filed on September 21, 1995. Thus, it is respectfully submitted that the omission of the word "traumatized" in claim 1 in the '477 patent is the fault of the Patent Office.

With respect to claim 14, patentee requested that the term "formulation" be replaced with the term "form", that the first instance of "said" be deleted, and the phrase "said functional" be replaced with the phrase "a functional". The replacement of the term "form" for "formulation" provided proper antecedent basis for that term in claim 14 (allowed claim 43) which depends on claim 9 (allowed claim 34). Allowed claim 34 reads "[t]he method of claim 32 wherein the sustained release dosage form comprises microparticles or nanoparticles" (emphasis added).

Thus, the errors to be corrected in the Request for Certificate of Correction filed on February 3, 2000 were either those of the Patent Office or were of a clerical or typographical nature or of minor character, occurred in good faith and were accompanied by the fee as set forth in 37 C.F.R. § 1.20(a). Patentee's Representatives respectfully request that the Office grant the Request for Certificate of Correction filed on February 3, 2000.



Issue Date: September 22, 1998
Title: THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS

Moreover, as none of the requested corrections in either Request for Certificate of Correction would expand or contract the scope of the claims as properly allowed, reexamination is not required. Therefore, it is urged that the Office grant the Requests for Certificate of Correction mailed on January 27, 2000 and February 3, 2000 for the '447 patent.

Respectfully submitted,

LAWRENCE L. KUNZ,

By his Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. Box 2938 Minneapolis, MN 55402 (612) 373-6959

Janet E. Embret Reg. No. 39,665

CERTIFICATE UNDER 37 CFR 1.8; The undersigned hereby certifies that this corresponde

Fromcoo Exoce

GCY 0000884

FAX TRANSMISSION SHEET

January 30, 2003

TO: Jariet Embretson, PhD, Esq. ORGANIZATION:	DEFENDANT'S EXHIBIT Anders on 13
·	1.18.05 546

PHONE #:

pages, including this cover sheet

COMMENTS:

FAX#: 612-339-3(61

Janet:

I have read over the materials you sent me.

You should receive 4

Regarding the claims on European Patent Application No. 94916743.1: I agree that I had no input into these claims and I agree to be removed form the patent.

Regarding the claims of "Therapeutic Inhibitor of vascular smooth muscle cells (US Patent # 5,811,447): Some of the primary claims are the direct result of my input. This claim would not have been possible without my direct involvement and scientific expertise.

I have noted the areas of these claims where my direct input was instrumental in developing these claims. I am a cardiovascular pathologist with many years of experience in this are. The NeoRx investigators were NOT familiar with this area and they depended upon me to provide this input.

Peter G. Anderson, D.V.M., Ph.D.

Professor and Director of Pathology Undergraduate Education
Department of Pathology, G-046 VH
University of Alabama at Birmingham
1670 University Boulevard
Birmingham, Alabama 35294-0019

Phone # (205) 934-2414
Fax # (205) 975-5697
E-mail: pga@uab.edu

Docket No. 295 003US1

NRX 00068 JCO

ISSUED CLAIMS

Serial Number 08/450,793 U.S. Patent No. 5,811,447

1. A method for biologically stenting a mammalian blood vessel, which method comprises:

administering to the blood vessel of a mammal cytochalasin B or a cytochalasin that is a functional analog of cytochalasin B in an amount and for a period of time affective to inhibit the contraction of vascular smooth muscle cells while not eliminating their ability to secrete extracellular matrix.

PGA

- 2. The method of claim 1 wherein the vessel is subjected to sugioplasty.
- The method of claim 1 wherein the cytochalasin is infused to achieve a concentration of about 10° to 10°.
- 4. The method of claim 1 wherein the cytochalasin is locally administered in one or more doses.
- 5. The method of claim 4 wherein the cytochalasin is administered by catheter.
- 6. The method of claim 1 wherein the cytochalasin is administered in solution.
- 7. The method of claim 1 further comprising the administration of a cytostatic agent in a sustained release desage form.
- 8. The method of claim 7 wherein the cytostatic agent is effective to inhibit cellular proliferation subsequent to stending.

- 9. A therapeutic method comprising maintaining or expanding blood vessel luminal area by systemically administering to a mammal an effective amount of cytochalasin B or a cytochalasin that is a functional analog of cytochalasin B.
- 10. The trethod of claim 9 wherein the cytostatic agent comprises cytochalasin B or a cytochalasin that is a functional analog thereof.
- 11. The method of claim 10 wherein the sustained release formulation comprises microparticles or nanoparticles comprising said cytochalasin B or said functional analog thereof.
- 12. A method for biologically stanting a mammalian blood vessel, which method comprises administering to the blood vessel of a mammal a cytoskeletal inhibitor in an amount and for a period of time effective to inhibit the contraction or migration of the vascular smooth muscle cells.
- 13. The method of claim 10 wherein the cytostatic agent comprises taxol or a structural analog thereof.
- 14. The method of claim 10 wherein the sustained release formulation comprises microparticles or nanoparticles comprising said cytochalasin B or said functional analog; thereof.
- 15. The method of claim 1 wherein the administration of cytochalasin B or a functional analog thereof is before, during or after the trauma.
- 16. The method of claim 10 wherein the administration of cytochalasin B or a functional analog thereof is before, during or after the trauma.

- 17. The raethod of claim 16 wherein the administration of cytochalasin B or a functional snalog thereof and the administration of the cytostatic agent is simultaneous.
- 18. The method of claim 10 wherein the administration of the cytostatic agent is before or after the trauma.

1 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE 2 3 BOSTON SCIENTIFIC SCIMED, INC. and

BOSTON SCIENTIFIC CORPORATION,

C.A. No 03-283-SLR

Plaintiffs,

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-vs-

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CORDIS CORPORATION and JOHNSON & JOHNSON, INC., Defendants.

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BOSTON SCIENTIFIC SCIMED, INC. and BOSTON SCIENTIFIC CORPORATION,

11

C.A. No. 03-1138-SLR

Plaintiffs,

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14 15

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23 24

25

-vs-

CORDIS CORPORATION; JOHNSON & JOHNSON, INC.; GUIDANT CORPORATION; GUIDANT SALES CORPORATION and ADVANCED CARDIOVASCULAR SYSTEMS, INC., Defendants.

The Videotaped Deposition of JANET EMBRETSON, JD, PhD, taken pursuant to Notice of Taking Deposition, taken before Christine K. Herman, RPR, a Notary Public in and for the County of Anoka, State of Minnesota, taken on the 12th day of January, 2005, at 1600 TCF Tower, 121 South Eighth Street, Minneapolis, Minnesota, commencing at approximately 9:44 a.m.

28 (Pages 106 to 109)

NEORX

NeoRx Corporation 410 West Harrison Seattle, WA 98119-4007 206-281-7001 Fax 206-284-7112

September 25, 1996

Dr. Peter Anderson
University of Alabama at Birmingham
Department of Pathology, Volker Hall GO23
UAB Station
Birmingham, AL 35294

Date 1- 27-05 Exhibit # Case Gentury V (VIII)
Deponent A A IN: A Reporter KATHLEEN KNOWLTON
Naegeli Reporting Corporation
(800) 528-3335 FAX (503) 227-7123

Re:

U.S. Patent Application Serial Number: 08/406,921

NeoRx # 00068 IUS

Dear Pete:

It was a pleasure talking to you Friday afternoon. I am sending you the patent application and claims we discussed on which you are being added as an inventor. Please let me know if you have any comments or questions.

I look forward to seeing you on your next trip to Seattle.

Best regards,

Anna Lewak Wight

Senior Intellectual Property Counsel

krb

NEORX

NeoRx Corporation 410 West Harrison Seattle, WA 98119-4007 206-281-7001

Fax 206-284-7112

December 3, 1996

Dr. Peter Anderson University of Alabama at Birmingham Volker Hall G023 UAB Station Birmingham, Alabama 35294

IN RE:

USSN 08/406,921 (NeoRx File: NRX 00068 IUS) USSN 08/389,712 (NeoRx File: NRX 00068 HCP) Therapeutic Inhibitor of Vascular Smooth Muscle Cells

Dear Dr. Anderson:

It was a pleasure talking with you yesterday. Thank you for your cooperation in signing and returning the Petitions.

As we discussed, I am forwarding to you copies of the claims in the two applications in which you are being named as an inventor.

Again, thank you for your cooperation.

Best regards,

Anna Lewak Wight

Director, Intellectual Property

/tc

Enc.

Date _(\sigma \infty \) Exhibit # \frac{7}{2}

Case \(\text{Cand \infty \text{Months}} \) Deponent \(\text{Frank} \) TIA REIDT

Naegeli Reporting Corporation

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SERIAL/APPLICATION I SLW 295.001US2	NO.: US 08/406,921 NRX 00068 IUS		
TITLE:	Therapeutic Inhibitor of Vascular Smooth Muscle Cells		
INVENTORS:	Lawrence L. Kunz		
FILED:	3/23/93 (in US); priority date 9/25/92		
LINEAGE:	National filing of PCT/US92/08220 (68 BPC), filed 9/25/92 from which priority claimed		
STATUS:	Pending		
EXAMINER (GROUP):	Unknown		

FIELD OF THE INVENTION

This invention relates generally to therapeutic methods involving surgical or intravenous introduction of binding partners directed to certain target cell populations such as smooth muscle proteins, cancer cells and effector cells of the immune system, particularly for treating conditions such as stenosis following vascular trauma or disease, cancer and diseases that are mediated by immune system effector cells.

ABSTRACT OF THE DISCLOSURE

Methods are provided for inhibiting stenosis following vascular trauma or disease in a mammalian host, comprising administering to the host a therapeutically effective dosage of a therapeutic conjugate containing a vascular smooth muscle binding protein that associates in a specific manner with a cell surface of the vascular smooth muscle cell, coupled to a therapeutic agent that inhibits a cellular activity of the muscle cell

CLAIMS AS AMENDED (As of October 18, 1995) 1

- A method for inhibiting vascular smooth muscle cells of a mammal for a period of time to achieve a therapeutic objective, which method comprises administering to the mammal a dosage form comprising an amount of therapeutic agent effective to inhibit vascular smooth muscle cell activity without substantially killing the cells, wherein the dosage form is bound to a binding peptide or protein capable of specifically binding to vascular smooth muscle cells, stromal cells or interstitial matrix surrounding vascular smooth muscle cells.
- 2. A method of claim 1 wherein the administering step is accomplished with a catheter.

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- A method of claim 1 wherein the administering step is accomplished with an infusion 3.
- A method of claim 1 wherein the binding protein specifically associated with a chondroitin 4. sulfate proteoglycan expressed on vascular smooth muscle cell membranes.
- 5. A method of claim I wherein the binding protein or peptide specifically associates with an epitope on collagen, extracellular glycoproteins, reticulum or elastic fibers.
- A method of claim 1 wherein the therapeutic agent is a protein kinase inhibitor or an 6.
- 7. A method of claim 1 wherein the therapeutic agent is suramin or an analog thereof.
- A method of claim 1 wherein the therapeutic agent is staurosporin or an analog thereof. 8.
- A method of claim 1 wherein the therapeutic agent is nitroglycerin or an analog thereof. 9.
- A method of claim 22 wherein the dosage form exhibits a particulate structure comprising 10. microparticles, nanoparticles or a mixture thereof.
- A method of claim 22 wherein the dosage form is biodegradable. 11.
- A method of claim 22 wherein the sustained time period for release of the therapeutic 12. agent ranges from about 3 to about 21 days.
- A method of claim 22 wherein the sustained time period for release of the therapeutic 13. agent ranges from about 10 to about 21 days.
- A method of claim 1 wherein the therapeutic objective is the reduction of restenosis 14.
- A method of claim 1 wherein the activity being inhibited is selected from the group 15. consisting essentially of DNA synthesis and migration of vascular smooth muscle cells.
- A method of claim 1 wherein the therapeutic agent exerts a cytostatic effect on vascular 16.
- A method for treating a mammalian cancer that is accessible to local administration of a 17. dosage form by achieving a cytotoxic effect on cancer target cells substantially without

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impacting non-target cells, which method comprises locally administering to the mammal a dosage form comprising an effective amount of therapeutic agent effective in killing target cancer cells, wherein the dosage form is bound to a binding peptide or protein capable of specifically binding to an epitope associated with target cancer cells, and wherein the therapeutic agent is selected from the group consisting of Roridin A and Pseudomonas exotoxin or analogs thereof.

Claim 18 canceled.

19. A method for treating a mammalian immune system-mediated disease characterized by an effector cell population that is accessible to local administration of a dosage form by achieving a metabolism modulating effect on target effector cells, which method comprises locally administering to the mammal a dosage form comprising an amount of therapeutic agent effective in achieving a metabolism modulating effect on target effector cells with or without substantially killing the cells, wherein the dosage form is bound to a binding peptide or protein capable of specifically binding to an epitope associated with target effector cells, and wherein the therapeutic agent is selected from the group consisting of Roridin A and Pseudomonas exotoxin, suramin, staurosporin or analogs thereof.

Claim 20 canceled.

- 21. The method of claim 1 wherein the therapeutic agent is a cytoskeletal inhibitor.
- 22. The method of claim 1 wherein the dosage form is a sustained release dosage form.
- The method of claim 4 wherein the binding protein is monoclonal antibody NR-AN-01.
- 24. The method of claim 10 wherein the particulate structure comprises a polymer derived from the condensation of alpha-hydroxycarboxylic acids and related lactones.
- 25. The method of claim 24 wherein the polymer is selected from the group consisting of a polylactide, a polyglycolide, and a copolymer of lactide and glycolide subunits.
- 26. The method of claim 25 wherein the polymer is poly (lactide coglycolide).
- 27. The method of claim 17 wherein the dosage form is a sustained release dosage form.
- 28. The method of claim 19 wherein the dosage form is a sustained release dosage form.
- 29. The method of claim 22 wherein the therapeutic agent is a cytoskeletal inhibitor.

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ORIGINALLY FILED CLAIMS

- A method for inhibiting vascular smooth muscle cells of a mammal substantially without killing the cells for a sustained period of time to achieve a therapeutic objective, which method comprises administering to the mammal a sustained release dosage form having dispersed therein an effective amount of therapeutic agent capable of inhibiting vascular smooth muscle cell activity without killing the cells, and the dosage form being bound to a binding peptide or protein capable of specifically localizing to vascular smooth muscle cells, stromal cells or interstitial matrix surrounding vascular smooth muscle cells.
- 2. A method of claim 1 wherein the administering step is accomplished with a catheter.
- 3. A method of claim 1 wherein the administering step is accomplished with an infusion needle.
- 4. A method of claim 1 wherein the binding protein specifically associated with a chondroitin sulfate proteoglycan expressed on vascular smooth muscle cell membranes.
- 5. A method of claim 1 wherein the binding protein or peptide specifically associates with an epitope on collagen, extracellular glycoproteins, reticulum or elastic fibers.
- 6. A method of claim 1 wherein the therapeutic agent is a protein kinase inhibitor or an analog thereof.
- 7. A method of claim 1 wherein the therapeutic agent is suramin or an analog thereof.
- 8. A method of claim 1 wherein the therapeutic agent is staurosporin or an analog thereof.
- 9. A method of claim 1 wherein the therapeutic agent is nitroglycerin or an analog thereof.
- 10. A method of claim 1 wherein the dosage form exhibits a particulate structure comprising microparticles, nanoparticles or a mixture thereof.
- 11. A method of claim 1 wherein the dosage form is biodegradable.
- 12. A method of claim 1 wherein the sustained time period for release of the therapeutic agent ranges from about 3 to about 21 days.
- A method of claim 1 wherein the sustained time period for release of the therapeutic agent ranges from about 10 to about 21 days.

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- 14. A method of claim 1 wherein the therapeutic objective is the reduction of restenosis following angioplasty.
- 15. A method of claim 1 wherein the activity being inhibited is selected from the group consisting essentially of DNA synthesis and migration of vascular smooth muscle cells.
- 16. A method of claim 1 wherein the therapeutic agent exerts a cytostatic effect on vascular smooth muscle cells.
- 17. A method for treating a mammalian cancer that is accessible to local administration of a dosage form by achieving a cytotoxic effect for a sustained period of time on cancer target cells substantially without impacting non-target cells, which method comprises administering to the mammal a sustained release dosage form having dispersed therein an effective amount of therapeutic agent capable of killing target cancer cells, and the dosage form being bound to a binding peptide or protein capable of specifically localizing to an epitope associated with target cancer cells.
- 18. A method of claim 17 wherein the therapeutic agent is selected from the group comprising Roridin A and Pseudomonas exotoxin or analogs thereof.
- A method for treating a mammalian immune system-mediated disease characterized by an effector cell population that is accessible to local administration of a dosage form by achieving a metabolism modulating effect for a sustained period of time on target effector cells substantially without killing the cells, which method comprises administering to the mammal a sustained release dosage form having dispersed therein an effective amount of therapeutic agent capable of achieving a metabolism modulating effect on target effector cells with or without killing the cells, and the dosage form being bound to a binding peptide or protein capable of specifically localizing to an epitope associated with target effector cells.
- 20. A method of claim 19 wherein the therapeutic agent is selected from the group comprising Roridin A and *Pseudomonas exotoxin*, suramin, staurosporin or analogs thereof.

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SERIAL/APPLICATION NO.: US 08/389,712			
TITLE:	Therapeutic Inhibitor of Vascular Smooth Muscle Cells		
INVENTORS:	Lawrence L. Kunz, Richard A. Klein Berner and Lawrence L. Kunz, Richard A. Klein		
FILED:	2/15/95		
LINEAGE:	This application claims priority from USSN 08/011,669 (68 CCP), filed 1/28/93, which is a CIP of PCT/US92/08220 (68 EPC), filed 9/25/92.		
STATUS:	Pending		
EXAMINER (GROUP):	Samuel Barts (Group 1200)		

FIELD OF THE INVENTION:

This invention relates generally to therapeutic methods involving surgical or intravenous introduction of binding partners directed to certain target cell populations, such as smooth muscle cells, cancer cells, somatic cells requiring modulation to ameliorate a disease state and effector cells of the immune system, particularly for treating conditions such as stenosis following vascular trauma or disease, cancer, diseases resulting from hyperactivity or hyperplasia of somatic cells and diseases that are mediated by immune system effector cells. Surgical or intravenous introduction of active agents capable of altering the proliferation or migration or contraction of smooth muscle proteins is also described. The invention also relates to the direct or targeted delivery of therapeutic agents to vascular smooth muscle cells that results in dilation and fixation of the vascular lumen (biological stenting effect). Combined administration of a cytocidal conjugate and a sustained release dosage form of a vascular smooth muscle cell inhibitor is also disclosed.

ABSTRACT OF THE DISCLOSURE:

Methods are provided for inhibiting stenosis following vascular trauma or disease in a mammalian host, comprising administering to the host a therapeutically effective dosage of a therapeutic conjugate containing a vascular smooth muscle binding protein that associates in a specific manner with a cell surface of the vascular smooth muscle cell, coupled to a therapeutic agent dosage form that inhibits a cellular activity of the muscle cell. Methods are also provided for the direct and/or targeted delivery of therapeutic agents to vascular smooth muscle cells that cause a dilation and fixation of the vascular lumen by inhibiting smooth muscle cell contraction, thereby constituting a biological stent.

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ELAIMS AS AMENDED (At of September 23, 1996):

 A method for maintaining an expanded vessel luminal area following vascular trauma, which method comprises:

administering to a mammal a sustained release dosage form comprising a cytostatic amount of a therapeutic agent which does not exhibit substantial cytotoxicity.

- The method of Claim 1 wherein the sustained release dosage form comprises an attached binding peptide or protein capable of specifically binding to vascular smooth muscle cells, stromal cells or interstitial matrix surrounding vascular smooth muscle cells.
- 3. The method of Claim 1 wherein the administering step is accomplished with a catheter.
- The method of Claim 2 wherein the binding protein specifically associates with a chondroitin sulfate proteoglycan expressed on vascular smooth muscle cells.
- The method of Claim 1 wherein the therapeutic agent is a cytoskeletal inhibitor or an analog thereof.
- The method of Claim 1 wherein the therapeutic agent comprises a cytochalasin or a cytochalasin analog.
- The method of Claim 1 wherein the sustained release dosage form comprises biodegradable microparticles, biodegradable nanoparticles or a mixture thereof.
- The method of Claim 1 wherein the therapeutic agent is released over a period of time from about 3 to about 21 days.
- A method for maintaining an expanded vessel luminal area following vascular trauma, which method comprises:

administering to the vessel a cytostatic amount of a therapeutic agent which does not exhibit substantial cytotoxicity, wherein the therapeutic agent is administered directly or indirectly to a traumatized vessel, and wherein the therapeutic agent is a cytoskeletal inhibitor or an analog thereof.

- 10. The method of Claim 9 wherein the administering step is accomplished with a catheter.
- 11. The method of Claim 9 wherein the therapeutic agent is a cytoskeletal inhibitor.
- 12. The method of Claim 9 wherein the therapeutic agent comprises a cytochalasin or a cytochalasin analog.

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- 13. The method of Claim 9 further comprising the step of subsequently administrating a sustained release dosage form comprising an effective amount of a cytostatic therapeutic agent that inhibits the contraction or migration of smooth muscle cells.
- 14. The method of Claim 13 wherein the sustained release dosage form comprises an attached binding peptide or protein capable of specifically binding to smooth muscle cells, stromal cells or interstitial matrix surrounding smooth muscle cells.
- 15. (Twice amended) A method for maintaining an expanded vessel luminal area following vascular trauma, which method comprises administering to a mammal the following:
 - (a) a therapeutic formulation comprising a cytocidal agent and a binding protein or peptide capable of specifically binding to vascular smooth muscle cells, stromal cells or interstitial matrix surrounding vascular smooth muscle cells; and
 - (b) a sustained release dosage form comprising an effective amount of a cytostatic therapeutic agent which does not exhibit substantial cytotoxicity.
- 16. The method of Claim 15 wherein the cytocidal agent comprises a toxin or toxin subunit and the cytostatic therapeutic agent is a cytoskeletal inhibitor.
- 17. The method of Claim 15 wherein the sustained release dosage form comprises an attached binding peptide or protein capable of specifically binding to vascular smooth muscle cells, stromal cells or the interstitial matrix surrounding vascular smooth muscle cells.

Claim 18 canceled.

19. The method of Claim 1 wherein the cytostatic therapeutic agent comprises taxol or an analog thereof.

Claims 20-27 canceled.

- 28. A method for inhibiting vascular smooth muscle cells of a mammal, which method comprises administering to the mammal a dosage form comprising an amount of a cytoskeletal inhibitor effective to inhibit vascular smooth muscle cell activity without substantial cytotoxicity to the cells, wherein the dosage form is bound to a binding peptide or protein capable of specifically binding to vascular smooth muscle cells, stromal cells, or interstitial matrix surrounding vascular smooth muscle cells.
- 29. The method of Claim 28 wherein the administering step is accomplished with a catheter.
- 30. The method of Claim 28 wherein the administering step is accomplished with an infusion needle.

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- 31. The method of Claim 28 wherein the binding protein specifically associates with a chondroitin sulfate proteoglycan expressed on vascular smooth muscle cell membranes.
- 32. The method of Claim 31 wherein the binding protein comprises monoclonal antibody NR-AN-01.
- 33. The method of Claim 28 wherein the binding protein or peptide specifically associates with an epitope on collagen, extracellular glycoproteins, reticulum or elastic fibers.
- 34. The method of Claim 28 wherein the cytoskeletal inhibitor comprises a cytochalasin or an analog thereof.
- 35. The method of Claim 28 wherein the cytoskeletal inhibitor comprises taxol or an analog thereof.
- 36. The method of Claim 28 wherein the dosage form comprises a sustained release dosage form.
- 37. The method of Claim 36 wherein the cytoskeletal inhibitor comprises a cytochalasin or an analog thereof.
- 38. The method of Claim 36 wherein the cytoskeletal inhibitor comprises taxol or an analog thereof.
- 39. The method of Claim 36 wherein the dosage form exhibits a particulate structure comprising microparticles, nanoparticles or a mixture thereof.
- 40. The method of Claim 39 wherein the cytoskeletal inhibitor comprises cytochalasin B or a cytochalasin that is an analog thereof.
- 41. The method of Claim 39 wherein the cytoskeletal inhibitor comprises taxol or an analog thereof.
- 42. The method of Claim 39 wherein the particulate structure comprises a polymer derived from the condensation of alpha-hydroxycarboxylic acids and related lactones.
- 43. The method of Claim 42 wherein the polymer is selected from the group consisting of a polylactide, a polyglycolide, and a copolymer of lactide and glycolide subunits.
- 44. The method of Claim 43 wherein the polymer is poly(lactide co-glycolide).
- 45. The method of Claim 36 wherein the dosage form is biodegradable.

- 46. The method of Claim 36 wherein the therapeutic agent is released over a period from about 3 to about 21 days.
- 47. The method of Claim 36 wherein the therapeutic agent is released over a period from about 10 to about 21 days.
- 48. The method of Claim 28 wherein the administration reduces restenosis following angioplasty.
- 49. The method of Claim 48 wherein the cytoskeletal inhibitor comprises a cytochalasin or an analog thereof.
- The method of Claim 48 wherein the cytoskeletal inhibitor comprises taxol or an analog thereof.
- 51. The method of Claim 28 wherein the activity being inhibited is selected from the group consisting of contraction and migration of vascular smooth muscle cells.
- 52. The method of Claim 28 wherein the activity being inhibited is selected from the group consisting of microfilament synthesis, assembly and disassembly in vascular smooth muscle cells.
- 53. The method of Claim 28 wherein the activity being inhibited is selected from the group consisting of microtubule synthesis, assembly and disassembly in vascular smooth muscle cells.
- 54. A method for inhibiting vascular smooth muscle cells of a mammal for a sustained period of time to achieve a therapeutic objective, which method comprises administering to the mammal a sustained release dosage form comprising an amount of a cytoskeletal inhibitor effective to inhibit vascular smooth muscle cell activity without substantial cytotoxicity to he cells.
- 55. The method of Claim 54 wherein the administering step is accomplished with a catheter.
- 56. The method of Claim 54 wherein the administering step is accomplished with an infusion needle.
- 57. The method of Claim 54 wherein the dosage form comprises a binding peptide or protein capable of specifically binding to vascular smooth muscle cells, stromal cells, or interstitial matrix surrounding vascular smooth muscle cells.

- 58. The method of Claim 57 wherein the binding protein specifically associates with a chondroitin sulfate proteoglycan expressed on vascular smooth muscle cell membranes.
- The method of Claim 58 wherein the binding protein comprises monoclonal antibody NR-AN-01.
- 60. The method of Claim 57 wherein the binding protein or peptide specifically associates with an epitope on collagen, extracellular glycoproteins, reticulum or elastic fibers.
- 61. The method of Claim 54 wherein the cytoskeletal inhibitor exerts a cytostatic effect on vascular smooth muscle cells.
- 62. The method of Claim 54 wherein the cytoskeletal inhibitor comprises a cytochalasin or an analog thereof.
- 63. The method of Claim 54 wherein the cytoskeletal inhibitor comprises taxol or an analog thereof.
- 64. The method of Claim 54 wherein the dosage form comprises microparticles, nanoparticles or a mixture thereof.
- 65. The method of Claim 64 wherein the cytoskeletal inhibitor comprises a cytochalasin or an analog thereof.
- 66. The method of Claim 64 wherein the cytoskeletal inhibitor comprises taxol or an analog thereof.
- 67. The method of Claim 64 wherein the particulate structure comprises a polymer derived from the condensation of alpha-hydroxycarboxylic acids and related lactones.
- 68. The method of Claim 67 wherein the polymer is selected from the group consisting of a polylactide, a polyglycolide, and a copolymer of lactide and glycolide subunits.
- 69. The method of Claim 68 wherein the polymer is poly(lactide co-glycolide).
- 70. The method of Claim 54 wherein the dosage form is biodegradable.
- 71. The method of Claim 54 wherein the therapeutic agent is released over a period from about 3 to about 21 days.
- 72. The method of Claim 54 wherein the therapeutic agent is released over a period from about 10 to about 21 days.

- 73. The method of Claim 54 wherein the therapeutic objective is the reduction of restenosis following angioplasty.
- 74. The method of Claim 73 wherein the cytoskeletal inhibitor comprises a cytochalasin or an analog thereof.
- 75. The method of Claim 73 wherein the cytoskeletal inhibitor comprises taxol or an analog thereof.
- 76. A method of Claim 54 wherein the activity being inhibited is selected from the group consisting of a contraction and migration of vascular smooth muscle cells.
- 77. The method of Claim 54 wherein the activity being inhibited is selected from the group consisting of microfilament synthesis, assembly and disassembly in vascular smooth muscle cells.
- 78. The method of Claim 54 wherein the activity being inhibited is selected from the group consisting of microtubule synthesis, assembly and disassembly in vascular smooth muscle cells.
- 79. A method for treating a traumatized vessel, which method comprises: administering to a mammal a sustained release dosage form comprising an amount of a cytoskeletal inhibitor effective to inhibit the contraction or migration of smooth muscle cells.
- 80. The method of Claim 70 wherein the sustained release dosage form comprises a binding peptide or protein capable of specifically binding to vascular smooth muscle cells, stromal cells or interstitial matrix surrounding vascular smooth muscle cells.
- 81. The method of Claim 80 wherein the binding protein specifically associates with a chondroitin sulfate proteoglycan expressed on vascular smooth muscle cells.
- 82. The method of Claim 79 wherein the administering steps is accomplished with a catheter.
- 83. The method of Claim 79 wherein the vessel is traumatized by angioplasty.
- 84. The method of Claim 79 wherein the cytoskeletal inhibitor comprises taxol or an analog thereof.
- 85. The method of Claim 79 wherein the cytoskeletal inhibitor comprises a cytochalasin or a cytochalasin analog.

- 86. The method of Claim 79 wherein the sustained release dosage form comprises biodegradable microparticles, biodegradable nanoparticles or a mixture thereof.
- 87. The method of Claim 79 wherein the administration is over about 3 to about 21 days.
- 88. The method of Claim 79 comprising the administration of a series of doses of the therapeutic agent.
- 89. A method for biological arteromyectomy, which method comprises administering to a mammal the following:

a cytocidal conjugate comprising a cytocidal agent and a binding partner capable of specifically binding to vascular smooth muscle cells, stromal cells or interstitial matrix surrounding vascular smooth muscle cells; and a sustained release dosage form comprising an amount of a cytoskeletal inhibitor effective to inhibit the contraction or migration of smooth muscle cells.

- 90. The method of Claim 89 wherein the cytocidal agent comprises a toxin or toxin subunit.
- 91. The method of Claim 89 wherein the sustained release dosage form comprises a binding peptide or protein capable of specifically binding to vascular smooth muscle cells, stromal cells or the interstitial matrix surrounding vascular smooth muscle cells.
- 92. The method of Claim 89 wherein the cytoskeletal inhibitor comprises a cytochalasin or a cytochalasin analog.
- 93. The method of Claim 89 wherein the cytoskeletal inhibitor comprises taxol or an analog thereof.
- 94. The method of claim 9 wherein the therapeutic agent comprises taxol or an analog thereof.
- 95. The method of Claim 15 wherein the cytocidal agent and the binding protein or peptide are linked.
- 96. The method of claim 6, 12 or 97 wherein the cytochalasin comprises cytochalasin B.
- 97. A method for maintaining an expanded vessel luminal area following vascular trauma, which method comprises:

administering to a mammal a sustained release dosage form comprising an effective amount of a cytostatic therapeutic agent which does not exhibit substantial cytotoxicity, wherein the sustained release dosage form comprises an attached binding peptide or protein capable of specifically binding to vascular

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Revised October 8, 1996 C:\WPWIN60\WPDOCS\ALW\CLAIMS.BK\68\00068HCP.WPD smooth muscle cells, stromal cells or interstitial matrix surrounding vascular smooth muscle cells.

- 98. The method of claim 97 wherein the cytostatic agent is a cytoskeletal inhibitor or an analog thereof.
- 99. The method of claim 97 wherein the cytostatic agent is taxol or an analog thereof.
- 100. The method of claim 97 wherein the cytostatic agent is a cytochalasin or an analog thereof.
- 101. The method of claim 1, 9, 15 or 97 wherein the administration of the therapeutic agent is before, during or after the vascular trauma.
- 102. The method of claim 1, 9, or 97 wherein the administering step is accomplished by a means other than a catheter.

ORIGINALLY FILED CLAIMS:

1. A method for maintaining an expanded vessel luminal area following vascular trauma, which method comprises:

administering to a mammal a sustained release dosage form having dispersed therein an effective amount of a therapeutic agent that inhibits the contraction or migration of smooth muscle cells.

- 2. The method of Claim 1 wherein the sustained release dosage form is coated with a covalently attached binding peptide or protein capable of specifically localizing to vascular smooth muscle cells, stromal cells or interstitial matrix surrounding vascular smooth muscle cells.
- 3. The method of Claim 1 wherein the administering step is accomplished with a catheter.
- 4. The method of Claim 2 wherein the binding protein specifically associates with a chondroitin sulfate proteoglycan expressed on vascular smooth muscle cells.
- 5. The method of Claim 1 wherein the therapeutic agent is a cytoskeletal inhibitor or an analog thereof.
- 6. The method of Claim 1 wherein the therapeutic agent is cytochalasin B or a cytochalasin that is a functional analog of cytochalasin B.
- 7. The method of Claim 1 wherein the sustained release dosage form is a biodegradable microparticle, biodegradable nanoparticle or a mixture thereof.

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- 8. The method of Claim 1 wherein the period of time ranges from about 3 to about 21 days.
- 9. A method for maintaining an expanded vessel luminal area following vascular trauma, which method comprises:

administering to the vessel an effective amount of a therapeutic agent that inhibits the contraction of [sic] migration of smooth muscle cells, wherein the therapeutic agent is administered directly or indirectly to a traumatized vessel.

- 10. The method of Claim 9 wherein the administering step is accomplished with a catheter.
- 11. The method of Claim 9 wherein the therapeutic agent is a cytoskeletal inhibitor or an analog thereof.
- 12. The method of Claim 9 wherein the therapeutic agent is cytochalasin B or a cytochalasin that is a functional analog of cytochalasin B.
- 13. The method of Claim 9 further comprising the step of subsequently administrating a sustained release dosage form having dispersed therein an effective amount of a therapeutic agent that inhibits the contraction or migration of smooth muscle cells.
- 14. The method of Claim 13 wherein the sustained release dosage form is coated with a covalently attached binding peptide or protein capable of specifically localizing to smooth muscle cells, stromal cells or interstitial matrix surrounding smooth muscle cells.
- 15. A method for maintaining an expanded vessel luminal area following vascular trauma, which method comprises administering to a mammal the following:
 - a cytocidal conjugate comprising a cytocidal agent and a binding partner capable of specifically localizing to vascular smooth muscle cells, stromal cells or interstitial matrix surrounding vascular smooth muscle cells; and
 - a sustained release dosage form having dispersed therein an effective amount of a therapeutic agent that inhibits the contraction of [sic] migration of smooth muscle cells.
- 16. The method of Claim 15 wherein the cytocidal agent comprises a toxin or toxin subunit and the therapeutic agent is a cytoskeletal inhibitor.
- 17. The method of claim 15 wherein the sustained release dosage form is coated with a covalently attached binding peptide or protein capable of specifically localizing to vascular smooth muscle cells, stromal cells or the interstitial matrix surrounding vascular smooth muscle cells.
- 18. The method of claim 13 wherein the administering step is accomplished by inserting into said vessel an intravascular stent comprising a biodegradable coating or porous non-

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biodegradable coating having releasably dispersed therein the sustained release dosage form.

- 19. The method of claim 18 wherein the intravascular stent is metallic.
- 20. The method of claim 18 wherein the intravascular stent consists essentially of a biodegradable material.
- 21. The method of claim 20 wherein the biodegradable material has releasably dispersed therein the sustained release dosage form.
- 22. The method of claim 9, wherein the vessel is a vascular graft, comprising following the surgical excision or isolation of the graft vessel, distending the graft vessel with an infusion of a therapeutic agent in an amount effective to cause an increase in the luminal area following engraftment of the graft.
- 23. The method of claim 22 wherein the infusion is accomplished by pressure infusion at of from about 0.2 to 1 atmospheres for a time period of about 2-4 minutes.
- 24. The method of claim 22 wherein the therapeutic agent utilized is cytochalasin B, or a functional analogue thereof.
- 25. The method of claim 24 wherein the amount of therapeutic agent administered is sufficient to inhibit stenosis.

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S/N 08/389,712

PATENT

Applicants: Serial No.:

Lawrence L. Kunz et al.

08/389,712

February 15, 1995

Examiner: S. Barts Group Art Unit: 1204

Docket: 295.007US1

Filed: Title:

THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS

PETITION TO CORRECT INVENTORSHIP PURSUANT TO 37 C.F.R. § 1.48(a)

Assistant Commissioner for Patents Washington, D.C. 20231

Dear Sir:

We, Lawrence L. Kunz and Richard A. Klein declare that we are the named inventors of the above-identified patent application, U.S. patent application Serial No. 08/389,712, filed February 15, 1995, and make this petition pursuant to 37 C.F.R. §1.48(a), to correct the inventorship from the joint inventorship of Lawrence L. Kunz and Richard A. Klein to the joint inventorship of Lawrence L. Kunz and John M. Reno.

The above-identified application is a continuation in part of U.S. application Serial No. 08/011,669, filed January 28, 1993, now abandoned, which is a continuation in part of international application No. PCT/US92/08220, filed September 25, L. Kunz and Richard A. Klein are the named inventors in U.S. application ? \(\int \) No. 08/011,669.

In early February 1995, at the time the papers were being prepared to file the above-identified application, NeoRx Corporation's outside patent counsel, NeoRx Corporation being the owner upon assignment of the application, was under the impression that the inventorship of the subject matter claimed in the above-identified application was the same as that of the parent application, i.e., U.S. application Serial No. 08/011,669.

In early 1996, the complete record of the parent application of the aboveidentified application was reviewed by the Senior Intellectual Property Counsel of NeoRx Corporation. Immediately subsequent to the review, the Senior Intellectual Property Counsel of NeoRx Corporation and outside patent counsel conducted a legal and factual analysis to determine whether the named inventors were the actual inventors of the subject matter claimed in the above-identified application.

Page 2

Scrial Number: 08/389,712
Filing Date: February 15, 1995
Title: THER APELITIC INHERITOR

IN: THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS

In April 1996, the Senior Intellectual Property Counsel of NeoRx Corporation and outside patent counsel concluded that claims directed to a particular embodiment of the invention, of which Richard A. Klein was a co-inventor, were never presented in the above-identified application. Therefore, Richard A. Klein was erroneously, without deceptive intention, included as a named inventor in the above-identified application.

Moreover, in February 1997, the legal representatives of NeoRx Corporation and outside patent counsel concluded that the above-identified application was amended, in the Preliminary Amendment filed October 30, 1995, to include claims which were directed to a particular embodiment of the invention, the use of a particular agent (taxol) in the methods of the invention, of which John M. Reno was a co-inventor. Thus, John M. Reno was erroneously, without deceptive intention, omitted as a named inventor in the above-identified application.

It is respectfully submitted that the correct inventors were not named in the present application through error and inadvertent oversight. Furthermore, this error was made without deceptive intention on the part of the actual inventors. Therefore, correction of the inventorship of the present application is appropriate under 37 C.F.R. §1.48(a), and is earnestly solicited.

We further declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements are made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this application or any patent issuing thereon.

Dated 4/15/97

Lawrence L. Kunz

Dated 4/21/97

Richard A. Klein

S/N 08/389,712

PATENT

Applicants:

Lawrence L. Kunz et al.

Examiner: S. Barts

Serial No.:

08/389,712

Group Art Unit: 1204

Filed:

February 15, 1995

Docket: 295.007US1

Title:

THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS

CONSENT OF ASSIGNEE TO CORRECTION OF INVENTORSHIP

Assistant Commissioner for Patents Washington, D.C. 20231

Sir:

NeoRx Corporation, 410 West Harrison, Seattle, Washington 98119-4007, being the sole owner of the above-identified-application, as evidenced by the Assignment enclosed herewith executed by Lawrence L. Kunz and John M. Reno, hereby consents to the change of inventorship in the above-identified application from the joint inventorship of Lawrence L. Kunz and Richard A. Klein to the joint inventorship of Lawrence L. Kunz and John M. Reno.

I declare that I am an official of the Assignee who is empowered to authorize this consent.

By: Oliveller Ugel
Title: Director of butellectual Peoper,

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:

Lawrence L. Kunz et al.

Examiner: S. Barts

Serial No .:

08/389,712

Group Art Unit: 1204

Filed:

February 15, 1995

Docket: 295.007US1

Title:

THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS

CERTIFICATE UNDER 37 CFR §3.73(b)

Assistant Commissioner for Patents Washington, D.C. 20231

NeoRx Corporation hereby certifies that it is the assignee of the entire right, title, and interest in the patent application identified above by virtue of an assignment from the inventors for which a copy thereof is attached.

I have reviewed all the documents in the chain of title of the patent application identified above and, to the best of my knowledge and belief, title is in the assignee identified above.

I am empowered to sign this certificate on behalf of the assignee.

I hereby declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements, and the like so made, are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

NeoRx Corporation

2

Name: Anna Lewak Wight

Title: Director of Intellectual Property

ASSIGNMENT

WHEREAS, WE, Lawrence L. Kunz, residing at 2310-223rd Court, N.E., Redmond, WA 98053, and John M. Reno, residing at 2452 Elm Drive, Brier, WA 98036, made certain new and useful inventions and improvements for which We filed an application for Letters Patent of the United States on February 15, 1995, which application is assigned U.S. serial number 08/389,712, and is entitled THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS.

AND WHEREAS, NeoRx Corporation, a corporation organized and existing under and by virtue of the laws of the State of Washington, and having an office and place of business at 410 West Harrison, Seattle, WA 98119, (hereinafter "Assignee") is desirous of acquiring the entire right, title and interest in and to said inventions, improvements and application and in and to the Letters Patent to be obtained therefor;

NOW, THEREFORE, to all whom it may concern, be it known that for good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, we have sold, assigned, and transferred, and by these presents do sell, assign and transfer unto said Assignee, its successors or assigns, the entire right, title and interest for all countries in and to all inventions and improvements disclosed in the aforesaid application, and in and to the said application, all divisions, continuations, or renewals thereof, all Letters Patent which may be granted therefrom, and all reissues or extensions of such patents, and in and to any and all applications which have been or shall be filed in any foreign countries for Letters Patent on the said inventions and improvements, including an assignment of all rights under the provisions of the International Convention, and all Letters Patent of foreign countries which may be granted therefrom; and we do hereby authorize and request the Commissioner of Patents and Trademarks to issue any and all United States Letters Patent for the aforesaid inventions and improvements to the said Assignee as the assignee of the entire right, title and interest in and to the same, for the use of the said Assignee, its successors and assigns.

AND, for the consideration aforesaid, we do hereby agree that we and our executors and legal representatives will make, execute and deliver any and all other instruments in writing including any and all further application papers, affidavits, assignments and other documents, and will communicate to said Assignee, its successors and representatives all facts known to us relating to said improvements and the history thereof and will testify in all legal proceedings and generally do all things which may be necessary or desirable more effectually to secure to and vest in said Assignee, its successors or assigns the entire right, title and interest in and to the said improvements, inventions, applications, Letters Patent, rights, titles, benefits, privileges and advantages hereby sold, assigned and conveyed, or intended so to be.

ASSIGNMENT Docket No.: 295.007US1 Serial No.: 08/389,712 Page 2 of 2

AND, furthermore we covenant and agree with said Assignee, its successions, that no assignment, grant, mortgage, license or other agreement affecting the rights and property herein conveyed has been made to others by me/us and that full right to convey the same as herein expressed is possessed by us.

expressed is possessed by us. IN TESTIMONY WHEREOF, I have hereunto set my hand this 15 day of apri **COUNTY OF** On this <u>15</u> day of <u>for 1</u>, 1997 before me personally appeared <u>Lawrence L. Kunz</u> to me known and known to me to be the person described in and who executed the foregoing instrument, and he/she duly acknowledged to me that he/she executed the same for the uses and purposes therein set forth. [SEAL] IN TESTIMONY WHEREOF, I have hereunto set my hand this 2 day of 1997. COUNTY OF King) On this 21 day of _______, 1997 before me personally appeared John M. Reno to me known and known to me to be the person described in and who executed the foregoing instrument, and he/she duly acknowledged to me that he/she executed the same for the uses and purposes therein set forth. [SEAL] Notary Public

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.

United States Patent Application COMBINED DECLARATION AND POWER OF ATTORN

As a below named inventor I hereby declare that: my residence next office address and sixing

As a below named inventor I hereby declare that: my residence, post office address and citize the areas as the below next to my name; that

I verily believe I am the original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled: THERAPEUTIC INHIBITOR OF VASCULAR SMOOTH MUSCLE CELLS.

The specification of which was filed on February 15, 1995 as application serial no. 08/389,712 and was amended on April 13, 1995, May 25, 1995, October 30, 1995, March 27, 1996, and September 23, 1996.

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, § 1.56 (see page 3 attached hereto).

I hereby claim foreign priority benefits under Title 35, United States Code, \$119/365 of any foreign application(s) for patent of inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on the basis of which priority is claimed:

No such applications have been filed.

I hereby claim the benefit under 35 U.S.C. § 119(e) of any United States provisional application(s) listed below.

No such applications have been filed.

I hereby claim the benefit under Title 35, United States Code, § 120/365 of any United States and PCT international application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, § 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, § 1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application.

Application Number	Filing Date	Status
PCT/US92/08220	September 25, 1992	Completed
08/011,669	January 28, 1993	Abandoned

I hereby appoint the following attorney(s) and/or patent agent(s) to prosecute this application and to transact all business in the Patent and Trademark Office connected herewith:

Anglin, J. Michael	Reg. No. 24,916	Embretson, Janet E.	Reg. No. 39,665	Litman, Mark A.	Reg. No. 26,390
Bianchi, Timothy E.	Reg. No. 39,610	Fogg, David N.	Reg. No. 35,138	Lundberg, Steven W.	Reg. No. 30,568
Billig, Patrick G.	Reg. No. 38,080	Forrest, Bradley A.	Reg. No. 30,837	Sandberg, Victoria A.	Reg. No. P-41,287
Billion, Richard E.	Reg. No. 32,836	Harris, Robert J.	Reg. No. 37,346	Schwegman, Micheal L.	Reg. No. 25,816
Brennan, Thomas F.	Reg. No. 35,075	Holloway, Sheryl S.	Reg. No. 37,850	Slifer, Russell D.	Reg. No. 39,838
Clark, Barbara J.	Reg. No. 38,107	Klima-Silherg, Catherine I.	Rcg. No. 40,052	Viksnins, Ann S.	Reg. No. 37,748
Donahue, Kimberly S.	Reg. No. P-40,998	Kluth, Daniel J.	Reg. No. 32,146	Woessner, Warren D.	Reg. No. 30,440
Drvin Michael A	Pen No 30 663	Lameira Charles A	Page No. 36 100	Julia, Walta D.	

I hereby authorize them to act and rely on instructions from and communicate directly with the person/assignee/attorney/firm/organization/who/which first sends/sent this case to them and by whom/which I hereby declare that I have consented after full disclosure to be represented unless/until I instruct Schwegman, Lundberg, Woessner & Kluth, P.A. to the contrary.

Please direct all correspondence in this case to Schwegman, Lundberg, Woessner & Kluth, P.A. at the address indicated below:
P.O. Box 2938, Minneapolis, MN 55402

Telephone No. (612)339-0331

Page	7	of

Our R	ef. 29:	5.007US1		
Scrial	No. 0	8/389,712		
Filing	Date:	February	15,	1995

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name of joint inventor Citizenship: Post Office Address: Signature:	United States of America 2310 - 223rd Court, N.E. Redmond, WA 98053	Residence: Redmond, WA Date: 4/15797	_
organistic.	Lawrence L. Kunz		
Full Name of joint invente Citizenship: Post Office Address:	or number 2: <u>John M. Reno</u> United States of America 2452 Elm Drive Brier WA 98036	Residence: Brier, WA	
Signature:	John M. Reno	Date:	
Full Name of inventor: Citizenship: Post Office Address:	· .	Residence:	
Signature:		Date:	
Full Name of inventor: Citizenship: Post Office Address:		Residence:	
Signature:		Date:	_

§ 1.56 Duty to disclose information material to patentability.

- (a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is cancelled or withdrawn from consideration, or the application becomes abandoned. Information material to the patentability of a claim that is cancelled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by \$\$1.97(b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:
 - (1) prior art cited in search reports of a foreign patent office in a counterpart application, and
 - (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.
- (b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and
 - (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
 - (2) It refutes, or is inconsistent with, a position the applicant takes in:
 - (i) Opposing an argument of unpatentability relied on by the Office, or
 - (ii) Asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

- (c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:
 - (1) Each inventor named in the application:
 - (2) Each attorney or agent who prepares or prosecutes the application; and
 - (3) Every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.
- (d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

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